

1

Part One Overview



Picture on previous page by courtesy of *Otago Daily Times*.

What Are Multilateral Environmental Agreements?

- 101 Multilateral environmental agreements (MEAs) are international treaties (or agreements – see Appendix 1 on pages 106-107) that tackle big environmental problems that cross national boundaries. MEAs:
- are the main vehicles for addressing global environmental concerns about the future of our planet;
 - can be scientifically complex and controversial.
- 102 Appendix 2 on pages 108-109 outlines the processes New Zealand follows towards acceptance of an agreement.
- 103 International agreements to which New Zealand is a party create a window through which the international community can judge New Zealand. Such agreements can be difficult to negotiate, because they often involve compromise to meet the diverse interests of the various countries that are party to the agreement.
- 104 The complexity of an international agreement may then be further reflected in the detailed work needed to give effect to it through domestic legislation and national action. And the final challenge of meeting the commitments that New Zealand has made in the agreement is the effect on the country's credibility and the success of its arguments in other international forums.

MEAs Limit the Power of the State

- 105 A previous Prime Minister said: *We live in a global economy. In an interdependent world, pure sovereignty – the complete control of one's own affairs – is not possible.*¹ All the treaties registered with the United Nations limit the powers of states in many ways.
- 106 Entering into treaties is a deliberate exercise of sovereignty – a willingness to be bound by international rules in the expectation that other states will similarly so bind themselves in the common good.

1 *The Treaty Making Process: Reform and the Role of Parliament*, Report 45, Law Commission, December 1997, page 21, quoting an address by Rt Hon J.B. Bolger to the Institute of International Affairs Annual Dinner, Wellington, 6 June 1997.



OVERVIEW

- 107 Reaching agreement with many other nations on seemingly intractable environmental issues is a hard climb, but takes the country only to “base camp”. The main haul up the mountain to the summit lies with the government departments and agencies responsible for implementing the agreement nationally after it has been accepted. Generally, implementation entails multiple actions – involving people and organisations with wide-ranging and often conflicting interests – to achieve the desired environmental outcome.

Why Do We Have MEAs?

- 108 An MEA is the main method available under international law for countries to work together on a global environmental issue.
- 109 An MEA may take the form of either “soft law” – setting out principles which parties respect; or “hard law” – specifying legally binding actions to be taken when considering a particular environmental issue.
- 110 Formulating an MEA involves achieving a common commitment among many nations with various levels of development, technical capabilities, resources, and concern for the environmental problem sought to be addressed. The parties to the agreement are then expected to implement it within their countries by establishing the necessary laws, regulations, and administrative systems. Resources are also required to enforce the laws enacted and to evaluate the progress made.

How Many MEAs and Other International Treaties Are There?

- 111 Well over 30,000 treaties are registered with the United Nations. MEAs are a small but growing subset of those treaties. Since 1972, the number of MEAs has grown from fewer than 50 to more than 170.
- 112 There are now 48 MEAs in force in New Zealand, covering:
- Antarctica;
 - atmosphere and space;
 - protection of the marine environment and resources;
 - fishing;
 - whaling;

- hazardous substances;
- arms control and nuclear pollution; and
- conservation of natural resources.

What Is This Report About?

113 This report sets out the results of our examination of New Zealand's approach in respect of four specific MEAs. Our main objective was to report on:

- whether Crown resources used to implement Government policy on the four agreements have been applied effectively to meet New Zealand's international obligations;
- what are the key elements for successful implementation of, and ongoing compliance with, MEAs; and
- the quality of reporting to Parliament on the progress and activities relating to implementing the four agreements.

114 We sought to form an opinion on:

- the soundness and completeness of the processes for negotiating and accepting MEAs;
- the extent of implementation of, and ongoing compliance with, the obligations imposed by the agreements;
- the adequacy of the information provided to Parliament about the agreements; and
- lessons for future MEAs.

115 We selected the following agreements for examination:

- *Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol)* which introduces controls on a range of ozone-depleting substances.
- *Convention on Wetlands of International Importance* – commonly referred to as the *Ramsar Convention* – which is an agreement on the protection and wise use of wetlands.



- *Convention on International Trade in Endangered Species of Wild Fauna and Flora* – commonly referred to as *CITES* – which facilitates the regulation and control of international trade in listed species of wild animals and plants, their parts, and derivatives.
- *United Nations Framework Convention on Climate Change (FCCC)* and its *Kyoto Protocol*, which are aimed at stabilising greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous human-caused interference with the world’s climate system.

116 We selected our sample on the basis of:

- each agreement belonging to the “Atmosphere and Space” or the “Conservation of Natural Resources” categories of agreement² (this criterion reduced the number of agreements relevant to our examination from 48 to 25);
- our view of the public interest in and awareness of the agreements;
- our view of the agreements’ relevance to New Zealand;
- the agreements providing examples of different processes (for consultation, approval, and acceptance before implementation) undertaken at different times – to enable us to identify changes and improvements over time.

117 Appendix 1 on pages 106-107 defines some key terms relating to international treaties that we use in this report.

Is New Zealand Meeting Its Obligations Under the Four MEAs that We Examined?

118 Our findings show uneven levels of implementation of New Zealand’s obligations under the four MEAs that we examined.

119 The Montreal Protocol has been the most successfully implemented. New Zealand has deliberately and successfully exceeded its targets, and is currently well ahead of the phase-out schedule to meet the obligations under the Protocol for the two remaining ozone-depleting substances – methyl bromide (when not used for quarantine and pre-shipment fumigation purposes) and hydrochlorofluorocarbons.

² *The State of New Zealand’s Environment 1997*, page 4.26: Ministry for the Environment, ISBN 0-478-09000-5.

- 120 New Zealand's international obligations under CITES are also being successfully fulfilled.
- 121 In respect of both the Montreal Protocol and CITES we identified a number of risks for their successful ongoing implementation, which we believe can be addressed by the agencies involved.
- 122 We found that New Zealand is generally meeting the specific obligations of the Ramsar Convention, but that the measures taken have failed to arrest the continuing degradation of wetlands. And the desired outcome of the Ramsar Convention – to stem the progressive encroachment on and loss of wetlands now and in the future – has not been met. This is especially true in respect of privately owned land.
- 123 New Zealand has met most of its international obligations under FCCC in the seven years since ratification, except the first and most important obligation that requires the adoption of effective national greenhouse gas policies to mitigate climate changes.

Key Elements for Successful Implementation and Ongoing Compliance

- 124 We identified four elements that increase the chances of successful implementation of, and ongoing compliance with, MEAs:
- specific enabling legislation for each agreement;
 - clear mandates, roles and accountabilities for the departments and agencies responsible for the agreement in New Zealand;
 - well-defined working and reporting relationships between the departments and agencies responsible for implementing the agreement; and
 - close and effective consultation and liaison with people and organisations most affected by the domestic implications of the agreement.

Agreement-specific Legislation

- 125 Under New Zealand treaty practice, new legislation may be considered unnecessary to implement a treaty because of existing legislation. However, in such cases the existing legislation will not refer specifically to the treaty to indicate that, for the future, the legislation also serves the purpose of implementing an international obligation.



OVERVIEW

- 126 An important risk with this approach (upon which the Law Commission has twice publicly commented³) is that those responsible for administering, applying and interpreting the legislation – or for proposing and approving amendments to it – may be unaware of its relevance to an international obligation. That may unknowingly lead to a breach of treaty obligations – as well as depriving those responsible of relevant interpretive or other information.
- 127 An example of this approach is legislation relevant to the Ramsar Convention, which makes no specific mention of the Convention – although elements of the Convention’s values have been recognised. In our view, this absence of specific mention may have contributed to the inadequate administrative arrangements for ongoing implementation of the Convention (see paragraphs 331-373 on pages 52-62).
- 128 We agree with the view that legislation to implement a treaty should (in its title, preamble, or purpose statement) make it explicit that it is being promoted for the purpose of permitting New Zealand to ratify the treaty.⁴ We consider that enactment of such legislation in the case of the Ramsar Convention would have provided an opportunity to more clearly define a national framework for planning, implementation, ongoing compliance, and monitoring of measures to protect wetlands.
- 129 The role of Parliament and others in the treaty-making process became clearer from July 1998, when the Government decided that more information should be provided on the impacts of implementation before ratifying an agreement. Multilateral and major bilateral treaties and amendments to them proposed for ratification must now be presented to and considered by Parliament. The treaty (or amendment) is accompanied by a national interest analysis, covering:
- reasons, advantages and disadvantages for New Zealand becoming a party;
 - the effects of the treaty obligations;
 - measures to implement the obligations; and
 - what people and organisations have been consulted.

3 *The Treaty Making Process: Reform and the Role of Parliament*, Report 45, Law Commission, December 1997, page 54, paragraph 135.

4 Report of the Standing Orders Committee *On its Review of the Operation of the Standing Orders*, parliamentary paper I.18B, 1996, ANNEX D.

- 130 Lessons have been learned. There is now an encouraging trend towards:
- a more considered, systematic and democratically consultative approach to negotiation and acceptance of international obligations before the Government accepts, ratifies, and implements new agreements; and
 - stronger underpinning through domestic legislation and national arrangements for implementing agreements.
- 131 Contemporary MEAs are also more specific in their implementation and on-going compliance requirements.

Clear Mandates, Roles and Accountabilities

- 132 The issues tackled by MEAs generally impinge on the work of several government departments or agencies. The four MEAs that we examined each had three or more agencies responsible for implementing the agreement (see Figure 1 on page 18). In these circumstances, the mandates, roles and responsibilities of the respective agencies need to be clear – otherwise, omissions, duplication, and confusion are likely to result.

Effective and Well-defined Working and Reporting Relationships

- 133 Effective inter-agency co-operation and partnership is critical to successful implementation and on-going compliance with MEAs. Where officials from the different agencies cannot reach agreement, progress is inevitably inhibited.





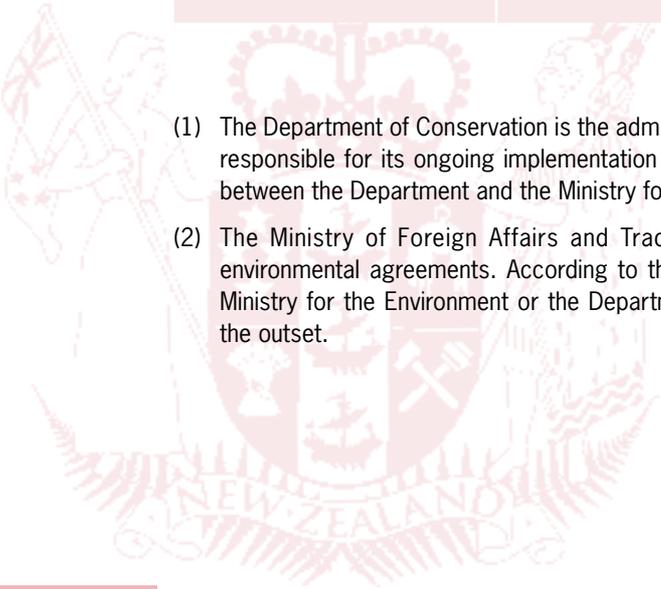
OVERVIEW

Figure 1
Agency Responsibilities for the Four MEAs

| | Ramsar | Montreal Protocol | CITES | Climate Change |
|--|----------------------------|-------------------|-------------|----------------|
| Department of Conservation | lead agency ⁽¹⁾ | | lead agency | |
| Ministry for the Environment | ✓ | lead agency | | lead agency |
| Ministry of Agriculture and Forestry | | ✓ | ✓ | ✓ |
| Ministry of Economic Development | | ✓ | | ✓ |
| New Zealand Customs Service | | ✓ | ✓ | |
| Ministry of Foreign Affairs and Trade⁽²⁾ | ✓ | ✓ | ✓ | ✓ |

(1) The Department of Conservation is the administrative authority for the Ramsar Convention and is accordingly responsible for its ongoing implementation in New Zealand, but responsibility for wetlands policy is shared between the Department and the Ministry for the Environment.

(2) The Ministry of Foreign Affairs and Trade has primary responsibility for negotiating all multilateral environmental agreements. According to the subject matter, other government departments, such as the Ministry for the Environment or the Department of Conservation, may be involved in the negotiations from the outset.



- 134 Such lack of agreement has been a particular problem in relation to FCCC, on which views have been polarised and there has been a lack of incentive to reach a satisfactory accommodation that would allow progress. There has been recent evidence of broader agreement – such as unanimous recommendations appearing in Cabinet papers on climate change.
- 135 Respective responsibilities and partnership issues between the Department of Conservation, the Ministry for the Environment, and regional and local government may also partly account for lack of protection of wetlands on private land.

Effective External Consultation and Liaison

- 136 The most successful of the agreements we examined, the Montreal Protocol, had been thoroughly explored at all its key stages with those affected by the phasing out of ozone-depleting chemicals. The Government's clear policy and approach to implementing the Protocol considerably assisted these discussions.
- 137 The most complex, controversial and potentially costly agreements are generally also the most difficult in terms of achieving effective consultation, liaison and (eventually) “buy-in” by the people and organisations most affected by the agreement. In our judgement, this important aspect of domestic implementation and ongoing compliance has not generally received sufficient attention from agencies in the past. However, we saw more recent evidence that the importance of external communications is increasingly being recognised by the agencies responsible for implementing these agreements.

Recommendations

- 138 **Departments and agencies responsible for implementing and complying with multilateral environmental agreements should ensure that (for each agreement) the following key success factors are in place:**
- **a legislative framework that provides adequate underpinning of any international obligations entered into;**
 - **a lead department or agency that is formally accountable for implementation and on-going compliance with the agreement;**



- clearly prescribed responsibilities for each of the agencies sharing the ongoing task of implementing the agreement;
- clear objectives and targets that all agencies must commit to;
- a specific requirement for agencies to collaborate to achieve demonstrable progress in implementing the agreement; and
- a comprehensive, shared strategy for involving and communicating with the people and organisations affected by the agreement.

Quality of Reporting to Parliament

- 139 We found that reporting to Parliament of issues and progress on multilateral environmental agreements generally is not adequate. This raises questions about what should also be done to improve reporting on agreements across the board.
- 140 MEAs can have major implications for individual countries' populations and business communities. The FCCC is an example. In this report we emphasise the need for the agencies responsible for implementing agreements to be properly accountable – an important element of this accountability is effective reporting to Parliament.
- 141 Parliament has two distinct interests concerning international treaties:
- resourcing (discussed in paragraphs 142-145); and
 - ongoing implementation and compliance (discussed in paragraphs 146-151).

Resourcing

- 142 Parliament's interest in the public money which is spent on treaty compliance, and in holding the Government to account for the expenditure of that money, is embedded in our constitutional system of government. Under the Public Finance Act 1989, no expenditure of public money can be made without Parliamentary authority. To this end:
- the *Estimates of Appropriations* must identify and describe the classes of outputs for which appropriations are sought, and must also identify the link between each class of outputs and the Government's desired outcomes;

- each government department must include in its forecast report a statement of objectives, which includes specifications of the performance to be achieved for each class of outputs; and
 - a government department must state in its annual report on how the public money appropriated in the previous financial year has been spent.
- 143 We expected that, where expenditure of public money related to the ongoing implementation of a multilateral environmental agreement, there would be some reference to the agreement in the relevant output class descriptions and other accountability information.
- 144 We found that the picture provided by the various agencies' reporting was often incomplete, and did not always allow Parliament explicitly to approve specific appropriations towards particular agreements. Figure 2 on page 22 shows the frequency of references to the four MEAs in a selection of each responsible department's accountability documents over the five years to 2000.
- 145 Figure 2 shows that FCCC was most often mentioned. The Ramsar Convention was mentioned only once – in the Department of Conservation's forecast report.

Ongoing Implementation and Compliance

- 146 Historically, Parliament's interest in the implementation of international treaties in New Zealand was limited to its role in enacting enabling legislation.
- 147 However, since July 1998 Parliament has been more systematically involved in the treaty-making process. Parliament now considers and reports on international treaties before they are accepted or ratified by the Government.
- 148 The 1997 report of the Foreign Affairs, Defence and Trade Committee on the treaty process did not address what, if any, *ongoing* role Parliament has in ensuring that treaty obligations are implemented effectively.⁵ The results of our examination suggest that Parliament could usefully develop such a role – especially where the successful ongoing implementation of a multilateral environmental agreement depends on the collaboration of a number of agencies.

5 *Inquiry into Parliament's Role in the International Treaty Process*, parliamentary paper I.4A.

Figure 2
Specific References in Agency Accountability Documents

| Agency | Forecast Report | | | | Estimates | | | | Annual Report | | | | Specific Annual Report of operations required to implement the Agreement | | | |
|--------------------------|------------------|-----|------------------|------|------------------|-----|------------------|------|------------------|-----|------------------|------|---|--------------|------------------|--------------|
| | DoC | MED | MfE | MFAT | DoC | MED | MfE | MFAT | DoC | MED | MfE | MFAT | DoC | MED | MfE | MFAT |
| Montreal Protocol | NA | No | Yes: lead agency | Yes | NA | No | Yes: lead agency | Yes | NA | No | Yes: lead agency | Yes | NA | Yes | Yes: lead agency | No |
| Ramsar | Yes: lead agency | NA | No | No | No: lead agency | NA | No | No | No: lead agency | NA | No | No | No: lead agency | Not required | Not required | Not required |
| CITES | Yes: lead agency | NA | NA | No | Yes: lead agency | NA | NA | No | Yes: lead agency | NA | NA | No | Yes: lead agency | Not required | Not required | Not required |
| Climate Change | NA | Yes | Yes: lead agency | Yes | NA | Yes | Yes: lead agency | Yes | NA | Yes | Yes: lead agency | Yes | NA | Not required | Not required | Not required |

Key to agencies: DoC – Department of Conservation; MED – Ministry of Economic Development; MfE – Ministry for the Environment; MFAT – Ministry of Foreign Affairs and Trade.

NA = Not Applicable.

- 149 Each of the four MEAs that we examined had more than one agency responsible for its implementation and on-going compliance. Single-agency reporting makes it difficult for the public to form an over view of each multilateral environmental agreement and the manner in which New Zealand's obligations under the agreement are being implemented. Improvements in that reporting – by more clearly linking agencies' expenditure with the agreements concerned – would go some way towards achieving this end.
- 150 However, in our view the public would also be better served by regular composite reports on each multilateral environmental agreement. Such reports could cover plans, intended expenditure, activities, achievements, and other issues. Parliament is the logical recipient of such reports.
- 151 As Figure 2 shows, each agency reports separately to Parliament on the progress it has made towards meeting the obligations for which it is partly responsible. The only exception we found to single-agency reporting was the Montreal Protocol's joint annual report on the operation of the *Ozone Layer Protection Act 1996* by the Ministry of Economic Development and the Ministry for the Environment. This is a useful model, although it does not provide a composite picture of each involved agency's resource use in implementing the Protocol.

Recommendations

- 152 We recommend that, as a first step, the responsible agencies take action to improve the transparency of their reporting to Parliament about:
- to what extent their annual appropriations are to be spent on implementing multilateral environmental agreements; and
 - their performance in doing so.
- 153 We also think it would be timely for Parliament to consider – possibly as an extension of the revised treaty procedures introduced in July 1998 – what interest it has in the ongoing compliance with MEAs that the Government has accepted. It is logical that Parliament has an interest of some kind in those agreements that it has considered before the Government accepted them. But such an interest may also extend to other agreements – accepted before the new procedures were introduced – which are of major public or international significance.



OVERVIEW

- 154 Whatever the outcome of that consideration, we think the public needs a better picture of how major MEAs are being implemented. The greater transparency that we recommend in single-agency reporting will go some way to achieving this end. However, we also recommend that the Ministry for the Environment (as part of its general oversight role) ensure that the following matters are reported periodically to Parliament for each agreement:
- the total resources being used to meet New Zealand's obligations under the agreement;
 - the extent to which New Zealand is meeting its key obligations, and the reasons for success or failure (including co-ordination and process issues); and
 - where applicable, the consequences of not meeting the obligations and any corrective actions proposed.
- 155 The composite reports could be assembled every three years into an omnibus report covering all MEAs, which could be presented to the House of Representatives and considered by the relevant select committees. This would enhance Parliament's ability to monitor the ongoing compliance with each agreement (to the extent it considers that is desirable).
- 156 We envisage that the preparation of the omnibus report would not be overly onerous, nor would Parliament be overloaded with information. The composite material for each agreement need be no more than one page and there are currently only 48 MEAs.
- 157 We are aware that if this recommendation were to be adopted more widely beyond environmental agreements there could be problems of scale.



Part Two

The Montreal Protocol on Substances that Deplete the Ozone Layer



Pictures on previous page by courtesy of *Cancer Society of NZ Inc.*

Conclusions and Recommendations

Conclusions

- New Zealand is successfully implementing the Montreal Protocol. (*Paragraph 234*)
- New Zealand is currently ahead of the phase-out schedules required under Protocol obligations for the two remaining ozone-depleting substances – methyl bromide when not used for quarantine and pre-shipment fumigation purposes and hydrochlorofluorocarbons. (*Paragraph 235*)
- New Zealand has special legislation, the Ozone Layer Protection Act 1996, to implement the Montreal Protocol. The Act clearly assigns agency roles, mandates, and powers, and is a major reason for the successful implementation of the Protocol. (*Paragraphs 215-219*)
- A review of the Ministry of Economic Development’s Ozone Permit System undertaken in 1999 identified a number of minor risks to continuing successful implementation of the Montreal Protocol. At the time of our audit some risks still needed to be addressed. (*Paragraphs 239-242*) In particular, there was a need to:
 - spread knowledge and expertise in the Montreal Protocol system administration more widely within the Ministry;
 - further improve documentation of the means of implementation; and
 - strengthen the Ministry’s management information system for permits.
- Implementation of the Montreal Protocol by New Zealand illustrates two commendable ways of reporting to Parliament. They are:
 - the mandatory procedure introduced in July 1998 for parliamentary consideration of an international agreement and its national interest analysis before ratification – which was followed for the latest amendment to the Montreal Protocol (*paragraphs 210-211*); and

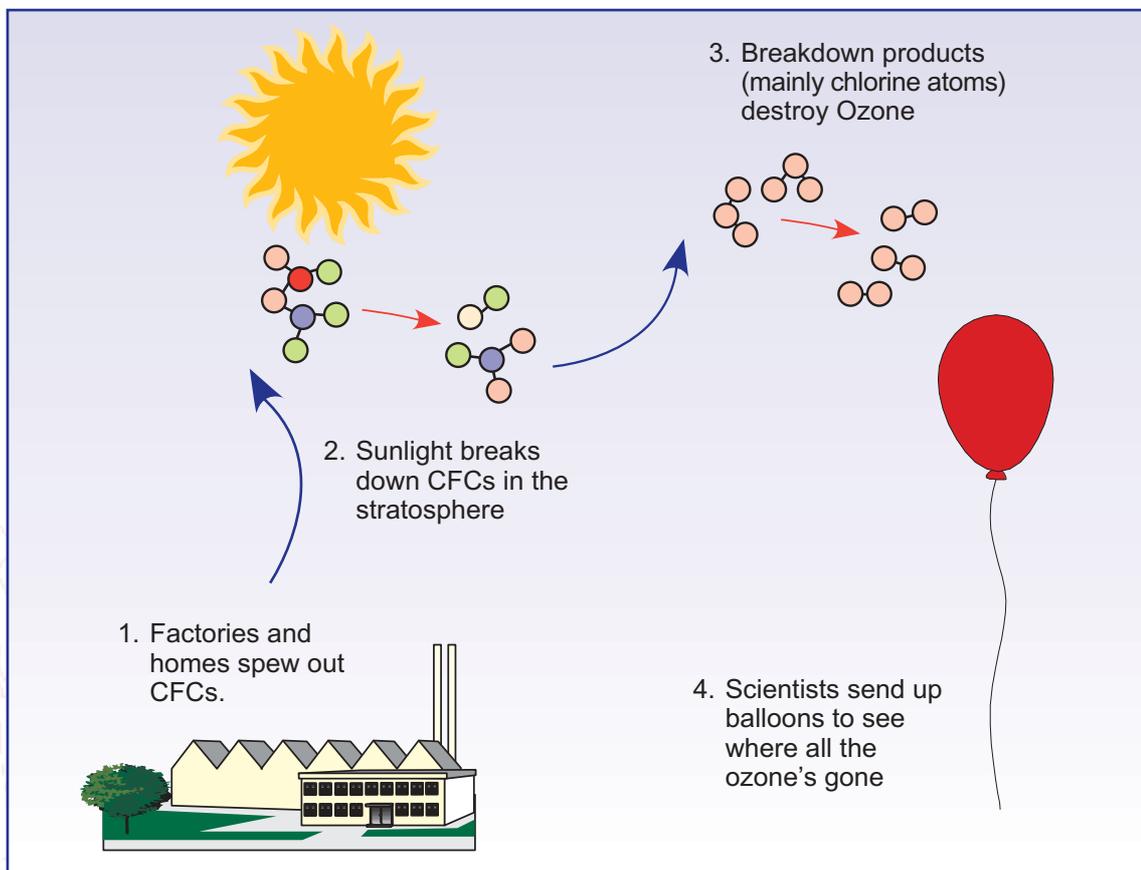
THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

- joint annual reporting to Parliament by the Ministries of Economic Development and the Environment on the operations of the Ozone Layer Protection Act 1996 (*paragraph 243*).

Recommendations

- Reporting on the Montreal Protocol could be improved further by:
 - reporting briefly to Parliament by relevant Ministries (through their Forecast Report, Estimates of Appropriations, and Annual Report) that their annual appropriations include funds to implement the Protocol; and
 - compiling and reporting all agency costs to implement the Protocol, possibly through an addition to the joint annual report to Parliament.

Figure 3
Life Cycle of CFCs



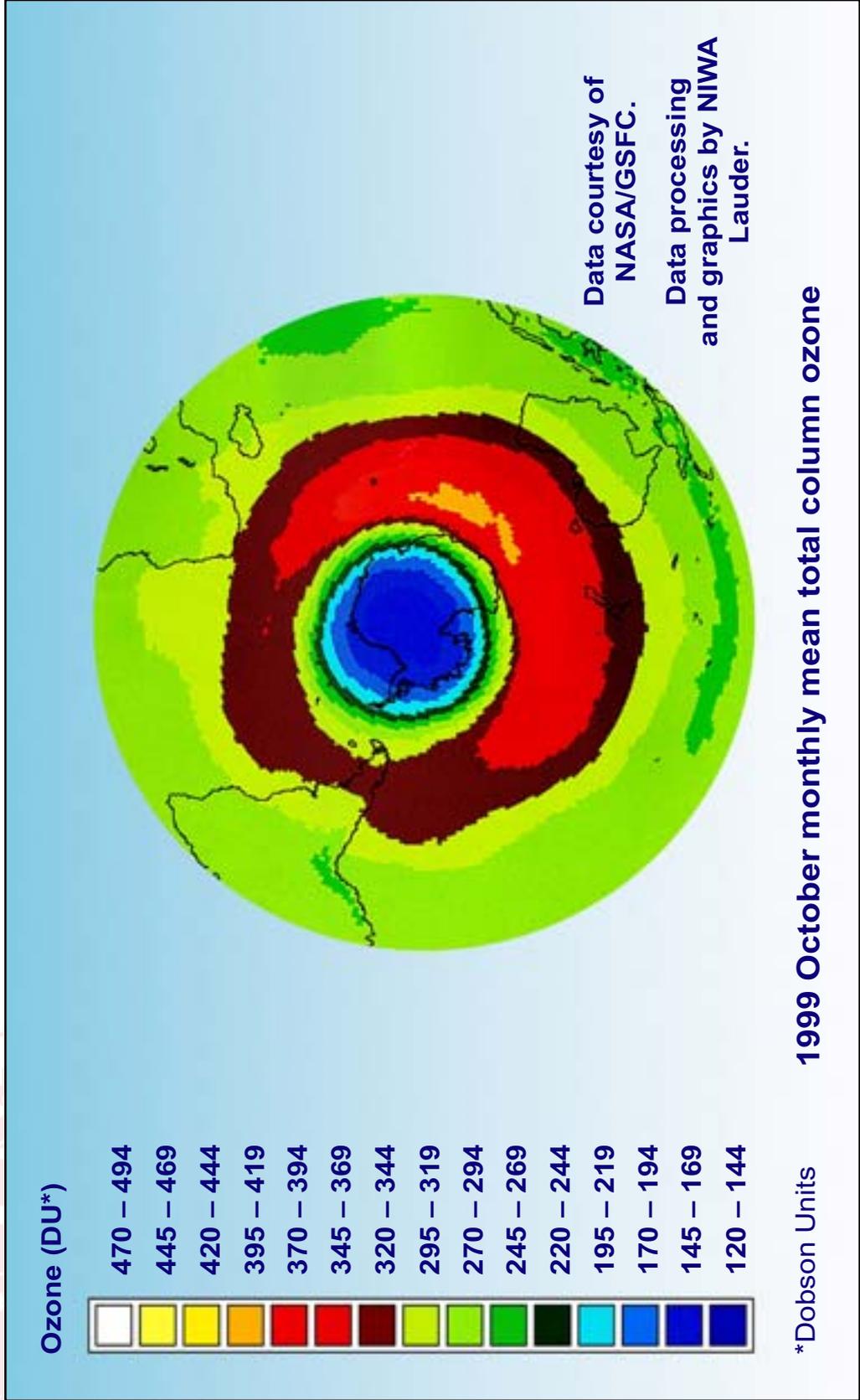
What Is the Montreal Protocol?

- 201 The stratospheric ozone layer shields the Earth from ultraviolet radiation from space that can otherwise damage human, animal and plant health. Certain man-made chemicals such as chlorofluorocarbons – commonly known as CFCs – reduce the stratospheric ozone layer’s effectiveness as a shield by depleting it, so that it becomes thinner, especially over Antarctica (see Figure 4 on page 30). This thinning allows more of the damaging ultraviolet radiation to reach the Earth’s surface than previously.
- 202 Reductions in the ozone layer pose risks to plant and animal health from the increased ultraviolet radiation reaching the Earth. The increasing incidence of skin cancers in humans is the main concern in New Zealand.
- 203 The Vienna Convention for the Protection of the Ozone Layer (adopted by the signatories on 22 March 1985) first promoted the need for global action to reduce ozone depletion. The Vienna Convention is given effect to by the Ozone Layer Protection Act 1996, and the full text is reproduced in the First Schedule to the Act.
- 204 The Montreal Protocol to the Vienna Convention is designed to protect the stratospheric ozone layer by phasing out the production and reducing the consumption of ozone-depleting substances. The full text of the Protocol in its current form is reproduced in the Fifth Schedule of the Ozone Layer Protection Regulations 1996.⁶
- 205 The first ozone-depleting substances to be targeted were CFCs. In later revisions of the Montreal Protocol, the phase-out of CFCs was speeded up and more ozone-depleting substances added. These were halons, carbon tetrachloride, methyl chloroform, hydrobromofluorocarbons, hydrochlorofluoro-carbons and methyl bromide – whose production and consumption were also to be frozen, reduced, or eliminated.

6 SR1996/222.

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

Figure 4
The Ozone Hole Over Antarctica



Ratification of the Protocol by New Zealand

Why Did New Zealand Ratify the Protocol?

- 206 New Zealand's national interest in the Montreal Protocol is reflected in these statements:

The depletion of the ozone layer is a matter of grave concern to the Government and people of New Zealand. Ours is the population closest to the Antarctic hole in the ozone layer . . . We already suffer one of the highest skin cancer rates in the world, and it is growing alarmingly. Increasing levels of ultraviolet radiation are implicated as a factor in its growth.

Further, the New Zealand economy is largely dependent on industries such as agriculture, horticulture, fishing and tourism, which are under threat from increasing ultraviolet radiation. We are particularly vulnerable, both economically and in terms of human health, to any factor which is likely to result in increased ultraviolet radiation.⁷

New Zealand accounts for only a very small proportion of the global consumption of controlled substances.⁸

- 207 New Zealand's share of global consumption of CFCs in 1986 was about 0.23%, and by itself New Zealand cannot achieve significant improvement in the ozone layer depletion.

It is therefore extremely important that there is an international commitment to save the ozone layer. New Zealand must demonstrate its own commitment to ozone protection.⁹

- 208 New Zealand actively participated at international forums leading to the Montreal Protocol and its subsequent development. New Zealand – through the Ministry of Foreign Affairs and Trade, the Ministry for the Environment, and the Meteorological Service of New Zealand – played a significant role in the preparation of the Protocol after consultation with domestic user groups. The Associate Minister for the Environment led the delegation to the final negotiating session.

7 Statement from New Zealand, UNEP Conference on the Ozone Layer, Mr Philip Woollaston, Associate Minister for the Environment, 16 September 1987.

8 Memorandum to Cabinet, *Ozone Protection Programme: Legislation*, from the Minister for the Environment, July 1989, page 7.

9 *Ozone Protection Policy, Draft Policy Statement*, page 22, attached to a Memorandum to Cabinet from the Minister for the Environment, *Ozone Protection Programme: Legislation*, 3 July 1989.

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

Was Parliament Consulted?

- 209 Parliament was not notified of matters that were subject to negotiation during the development of the Montreal Protocol before 1989.
- 210 Multilateral and major bilateral treaties and amendments to them proposed for ratification must now be presented to and considered by Parliament, along with a national interest analysis covering:
- the reasons, advantages and disadvantages for New Zealand becoming a party;
 - the effects of the treaty obligations;
 - the measures to implement the obligations; and
 - what people and organisations have been consulted.
- 211 This process was followed for the 1998 amendment to the Montreal Protocol which tightened controls on methyl bromide, one of the most significant ozone-depleting substances.
- 212 The Ministry of Foreign Affairs and Trade, the Ministry of Economic Development, the former New Zealand Meteorological Service, the former Department of Scientific and Industrial Research, and the Treasury were consulted in preparing the memorandum for Cabinet recommending ratification of the Protocol. The (then) Department of Health and the (then) Customs Department were also consulted.
- 213 Stakeholder groups were consulted during the development of the Montreal Protocol. Officials of the Ministry for the Environment and the Ministry of Economic Development met with representatives of industries using CFCs and halons (which do not occur naturally) to determine whether substitutes or alternatives to CFCs existed and could be used. Substitutes or alternatives were available for all CFC uses in New Zealand.
- 214 The Ministries of the Environment and Economic Development also consulted extensively before the meeting of the Parties that adopted the 1998 amendment to the Montreal Protocol. Groups consulted included relevant industry groups (such as berry fruit growers, tomato growers, and forestry groups), individual growers, non-governmental organisations, and others.

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

Legislation Underpinning the Protocol

- 215 The first statutory controls were introduced with the Customs Import Prohibition (Chlorofluorocarbons) Order 1988 under section 48 of the Customs Act 1966. The order introduced an import permit system for CFCs and came into force on 1 July 1988, six months before the Montreal Protocol came into force in New Zealand.
- 216 Following extensive consultation with industry and other interested parties, the Customs Import Prohibition (Chlorofluorocarbons) Order 1988 was replaced by more comprehensive legislation in the form of the Ozone Layer Protection Act 1990.
- 217 Amendments to the 1990 Act:
- added more controlled substances;
 - restricted trade in the substances; and
 - speeded up phase-out schedules;
- generally, in advance of changes to strengthen the requirements of the Montreal Protocol.
- 218 The Ozone Layer Protection Act 1996 and the Ozone Layer Protection Regulations 1996 replaced the 1990 Act. The purpose of the legislative change was to facilitate future adjustments to the system and to strengthen obligations for officials to consult with those affected.
- 219 The Ozone Layer Protection Act 1996 provides for controls on the import, export, sale, use, or manufacture of controlled substances and goods prohibited by regulations made under the Act. The controls are subject to discretionary exemptions.



The Obligations and the Agencies Responsible

The Obligations

- 220 Under the Montreal Protocol, New Zealand made a commitment to:
- reduce the consumption of CFCs by 1998 to 50 per cent of the consumption in 1986; and
 - freeze the production of halons at 1986 levels by the end of 1992.
- 221 The initial controls were subsequently tightened and extended to a broader range of ozone-depleting substances – though, as these substances were not produced in New Zealand, restrictions were only required on their importation.
- 222 The Montreal Protocol also required New Zealand to contribute to a multilateral fund for assisting developing countries:
- to prepare programmes to implement control measures; and
 - with projects to phase out ozone-depleting substances.
- 223 Countries that are Parties to the Montreal Protocol must report annually to the Protocol’s International Secretariat on imports and exports of the controlled substances. The Parties attend meetings to review the implementation of the Protocol, and to consider and decide upon further adjustments and reductions.

Agencies and Responsibilities

- 224 The Ministry for the Environment, with the Ministry of Economic Development, prepared an Ozone Protection Programme Draft Policy Statement in 1989 after consultation with industry. The Policy Statement was the basis of the Ozone Layer Protection Act 1990 (see paragraphs 216-217).
- 225 The Ministry for the Environment administers the Ozone Layer Protection Act 1996 and is responsible for any changes to the legislation. The Act permits the Minister for the Environment to recommend regulations for phasing out ozone-depleting substances, and give effect to New Zealand’s obligations under the Montreal Protocol and the Vienna Convention.

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

- 226 Following consultation with those affected, the Minister may also require that a code of practice be observed by *any person whose business is or includes:*
- *the manufacture or use of any goods, containing or designed to use, or manufactured using, controlled substances; or*
 - *the installing, operating, servicing, modifying, or dismantling of any equipment containing or designed to use, or manufactured using, using controlled substances.*
- 227 The Ministry of Economic Development is responsible for all major operational and implementation aspects of the Ozone Layer Protection Act 1996. In particular, the Ministry may grant exemptions from prohibitions on the import, export, manufacture, sale or use of controlled substances, goods or other obligations imposed by the Act.
- 228 The Ministry of Economic Development:
- Monitors consumption of ozone-depleting substances, and manages the import system and controls (including applications for import exemptions of the controlled and prohibited substances).
 - Receives 800-900 applications each year for annual usage permits of controlled substances.
 - Assesses applications against criteria such as previous usage, and approves them subject to New Zealand's obligation to meet its country import and phase-out targets.
 - Is also responsible for ensuring compliance with the Ozone Layer Protection Act.
- 229 Since 1991, the Ministry of Economic Development and the Ministry for the Environment have had a Memorandum of Understanding to clarify their respective responsibilities and working relationships in regard to the Montreal Protocol.
- 230 The New Zealand Customs Service enforces the import controls at the country's borders. Officers of both the Customs Service and the Ministry of Economic Development have powers under the Ozone Layer Protection Act to ensure compliance through inspection, search warrants, and seizure of substances and goods.
- 231 Border clearance of imported controlled substances is achieved through individual applicants or their agents presenting approval documents to the Customs Service officers, who check entitlements. The Customs Service reports the results of its enforcement of the Act to the Ministry of Economic Development.

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

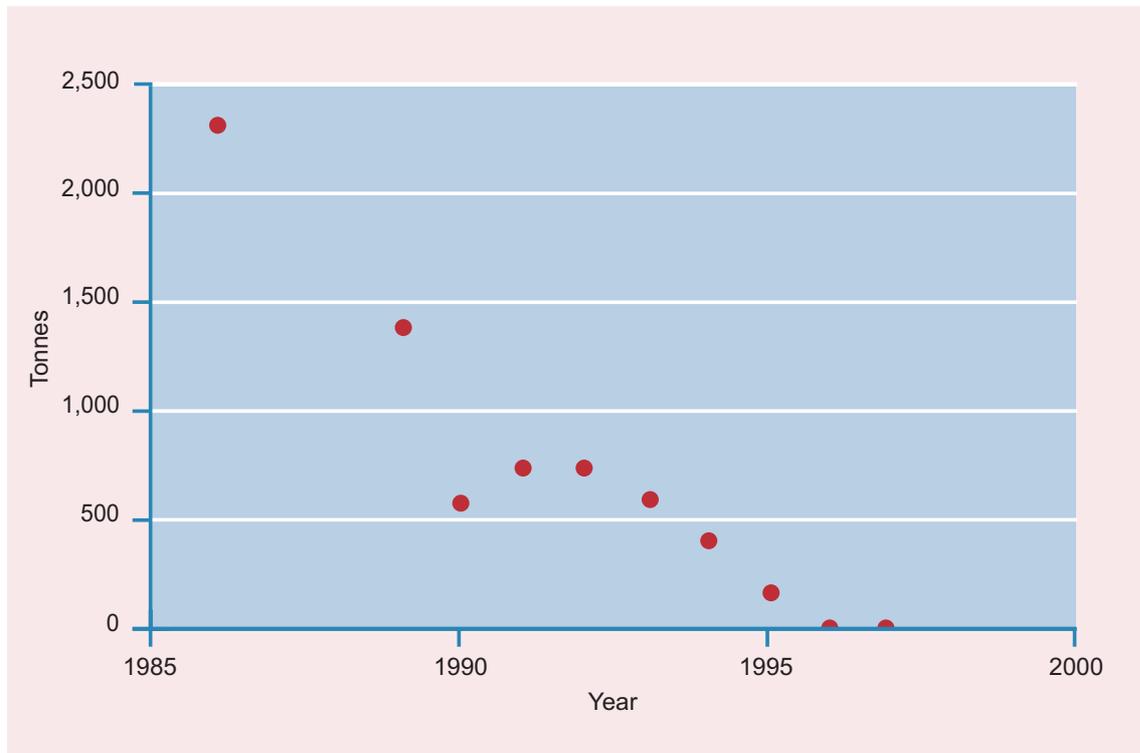
- 232 The Ministry of Agriculture and Forestry's role in the Montreal Protocol focuses on the phase-out of methyl bromide that is used for quarantine and pre-shipment treatments. The Ministry is concerned with the potential domestic impacts in the agriculture and forestry sectors of the phase-out schedule.
- 233 The Ministry of Foreign Affairs and Trade briefs and coordinates departmental participation and leads the delegations to international negotiations and meetings. The Ministry also chairs an interdepartmental co-ordinating committee that oversees the implementation of the commitments under the Montreal Protocol.

Is New Zealand Meeting Its Obligations?

- 234 New Zealand is meeting its obligations under the Montreal Protocol:
- **By introducing measures to reduce or freeze the consumption of controlled substances** (paragraphs 220-221). The Ozone Layer Protection Act 1996 provides the necessary statutory measures and controls for meeting the primary obligation of complying with the phase-out schedules for controlled ozone-depleting substances.
 - **By contributing to a multilateral fund** (paragraph 222). The agreed payments have been made in full and on time.
 - **By reporting annually to the International Secretariat and attending international meetings** (paragraph 223). Annual reporting of the consumption of controlled substances has been timely and clearly shows the effectiveness of ongoing compliance with the Protocol obligations. Meetings to review implementation of the Protocol have been attended.
- 235 Figure 5 on page 37 shows that New Zealand had significantly reduced domestic consumption of CFCs before 1989, when the Montreal Protocol came into effect. New Zealand's phase-out of controlled substances is currently well ahead of the phase-out schedule required by the Protocol – New Zealand is issuing permits for only half of its quota, and only two-thirds of the permitted amounts are actually being imported.

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

Figure 5
New Zealand's Consumption of CFCs 1986-1997



- 236 The speed of New Zealand's phase-out has been driven by the Government and the Ministry for the Environment – though other agencies have played their part in, for example, liaison and consultation with users of the controlled substances in agriculture and industry.
- 237 As the allowable import volumes of some controlled substances reduce, industry is starting to combine the controlled substances with other chemicals to get the same effect using less of the controlled substance. Mixing substances in this way makes it difficult to identify the new combinations and to measure the controlled substance component.
- 238 However, mixtures of ozone-depleting substances and other chemicals comprise only about 10 per cent of the total imports. Measurement of mixtures for the presence of ozone-depleting chemicals is therefore not an issue while New Zealand is exceeding its reduction target by more than 50%.



THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

- 239 In 1999, the Ministry of Economic Development commissioned Deloitte Touche Tohmatsu to review its systems for:
- compliance with the legislation;
 - ease of operability and information retrieval;
 - adequate internal control;
 - scope for more automation; and
 - arrangements for disaster recovery.
- 240 The Deloitte review concluded that the present system is complying with the legislation and the Montreal Protocol. It recommended changes to improve the reliability of information used to administer the Protocol and the effectiveness of processes and procedures.
- 241 At the time of our audit there were some minor risks of the Ministry of Economic Development not meeting its administrative obligations due to:
- much of the Ministry's institutional knowledge of the management of the Protocol residing with one employee, with associated risks to the continuity of the operation;
 - inadequate documentation of its systems, compromising the ability to put in place back-up in the event of systems failure; and
 - reliance on a paper-based register and spreadsheet for permit approvals, with risks to data security, data retrieval, analysis and reporting of unused entitlements.
- 242 The Ministry of Economic Development has told us since our review that these issues have been addressed and that its systems are adequate.

Reporting to Parliament

- 243 The Ministers of Economic Development and the Environment jointly prepare – and the Minister of Economic Development presents to the House of Representatives each year – a report describing exemptions granted and the operations of the Ozone Layer Protection Act during that year. The report provides data on the annual decreases in imports and use of methyl bromide.
- 244 Other information can be provided to Parliament through the annual *Estimates of Appropriations*, departmental forecast reports, select committee financial reviews, and annual reports.

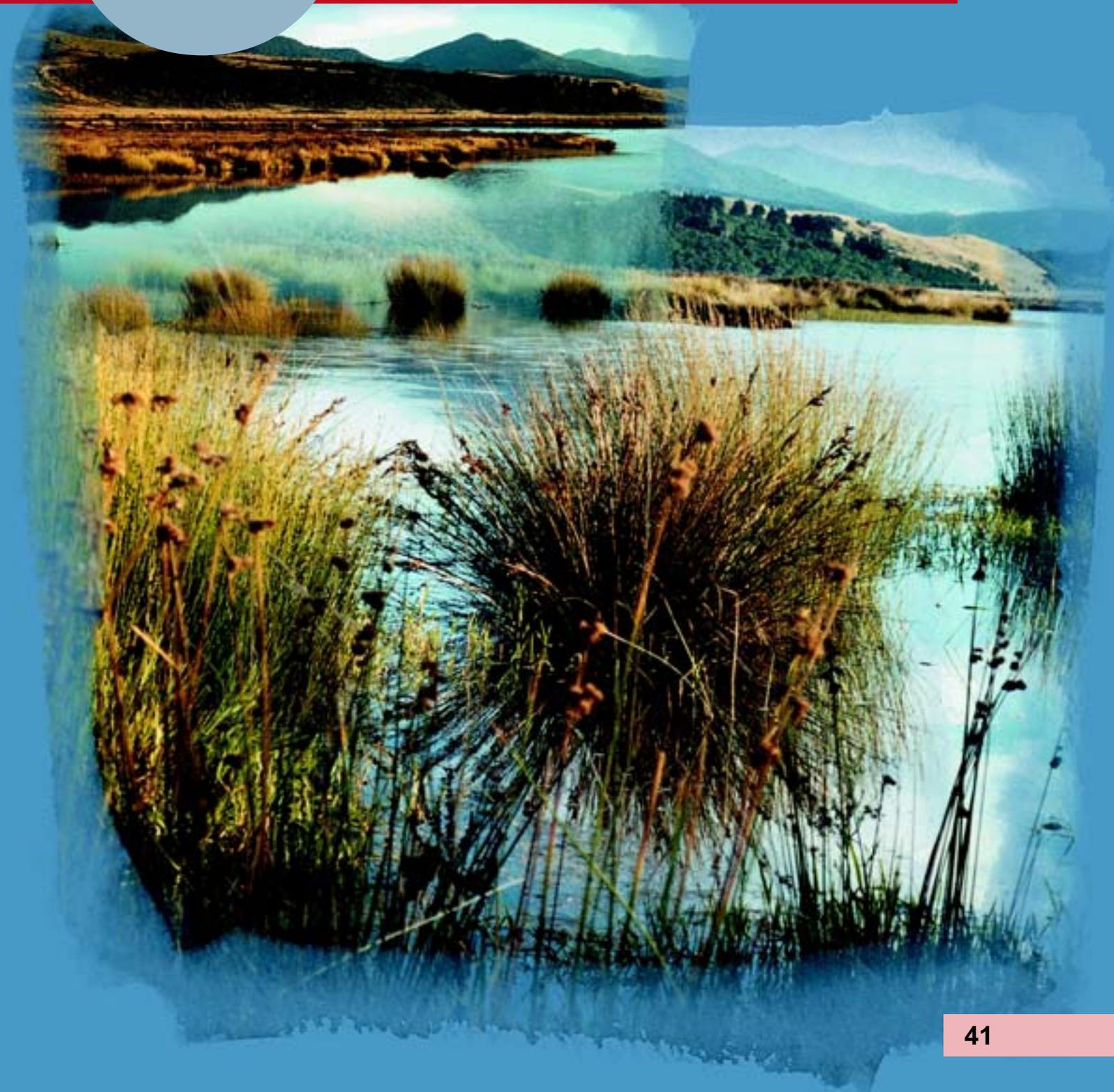
THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

- 245 The Ministry of Economic Development *did not* specifically mention the Ministry's activities in regard to its responsibilities under the Ozone Layer Protection Act in its annual reports for 1998 and 1999, or its forecast report or the *Estimates of Appropriations* for the year ended 30 June 2000.
- 246 Between 1995 and 1999 the Ministry for the Environment *did* specifically mention its plans and achievements in regard to the Montreal Protocol in its annual reports, the *Estimates of Appropriations*, and forecast reports.



Part Three

The Ramsar Convention on Wetlands of International Importance



Conclusions and Recommendations

Conclusions

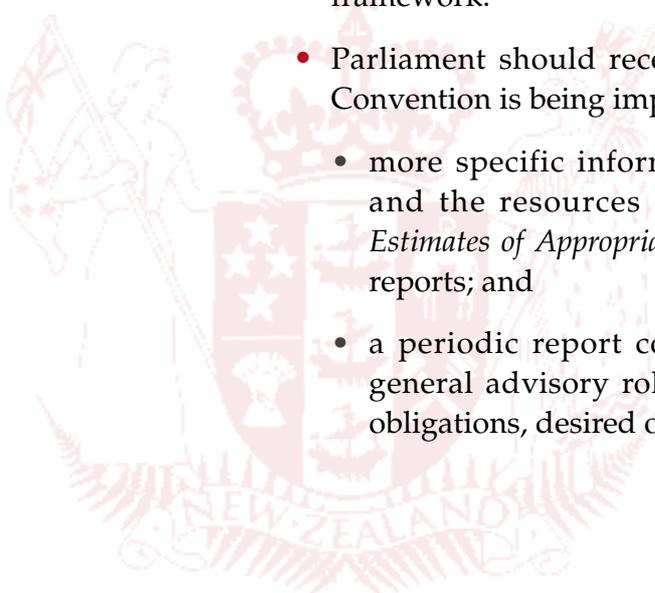
- Progress has been made in a number of areas for the management and protection of wetlands. Nevertheless, the key message is that the policies and legislative measures adopted to implement the Ramsar Convention do not appear to have been successful in meeting the desired outcomes of the Convention. (*Paragraphs 331-337*)
- The desired outcomes of the Ramsar Convention are clearly identifiable from the text (see Figure 7 on page 47). The Convention requires specific actions by the Parties, most of which can be implemented without domestic legislation. However, the key obligation is to formulate and implement national planning in such a way as promotes “as far as possible” the wise use of wetlands (*paragraph 320*). This is a “soft” obligation, the implementation of which is not capable of precise measurement.
- Conventional wisdom is that legislation to implement international obligations should, wherever possible, refer to the obligation in question. New Zealand chose not to do this in the case of the Ramsar Convention. (*Paragraphs 311-312*)
- Allocation of policy responsibility for wetlands has also, in our view, been deficient. This has resulted in the lack of a coherent national policy framework on wetlands. Much has been done – but, as the agencies concerned have acknowledged, there has been no central focus. (*Paragraph 353*)
- There is also evidence that wetland degradation in New Zealand has been worse than it ought to have been. To an extent this may have been inevitable. But it is probable that the cause lies, in part, in the lack of guidance – both in legislative and policy terms – on where the balance should lie between development and wetland protection. (*Paragraphs 333-335*)
- We believe the variability and differing values of wetlands lead directly to difficulties in application and implementation of the Ramsar Convention. And these difficulties reinforce the need to develop a national wetlands planning framework to set priorities, targets, standards and so on within an agreed understanding of the Convention obligation of “as far as possible the wise use of wetlands”. (*Paragraphs 343-346 and 355-356*)



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

Recommendations

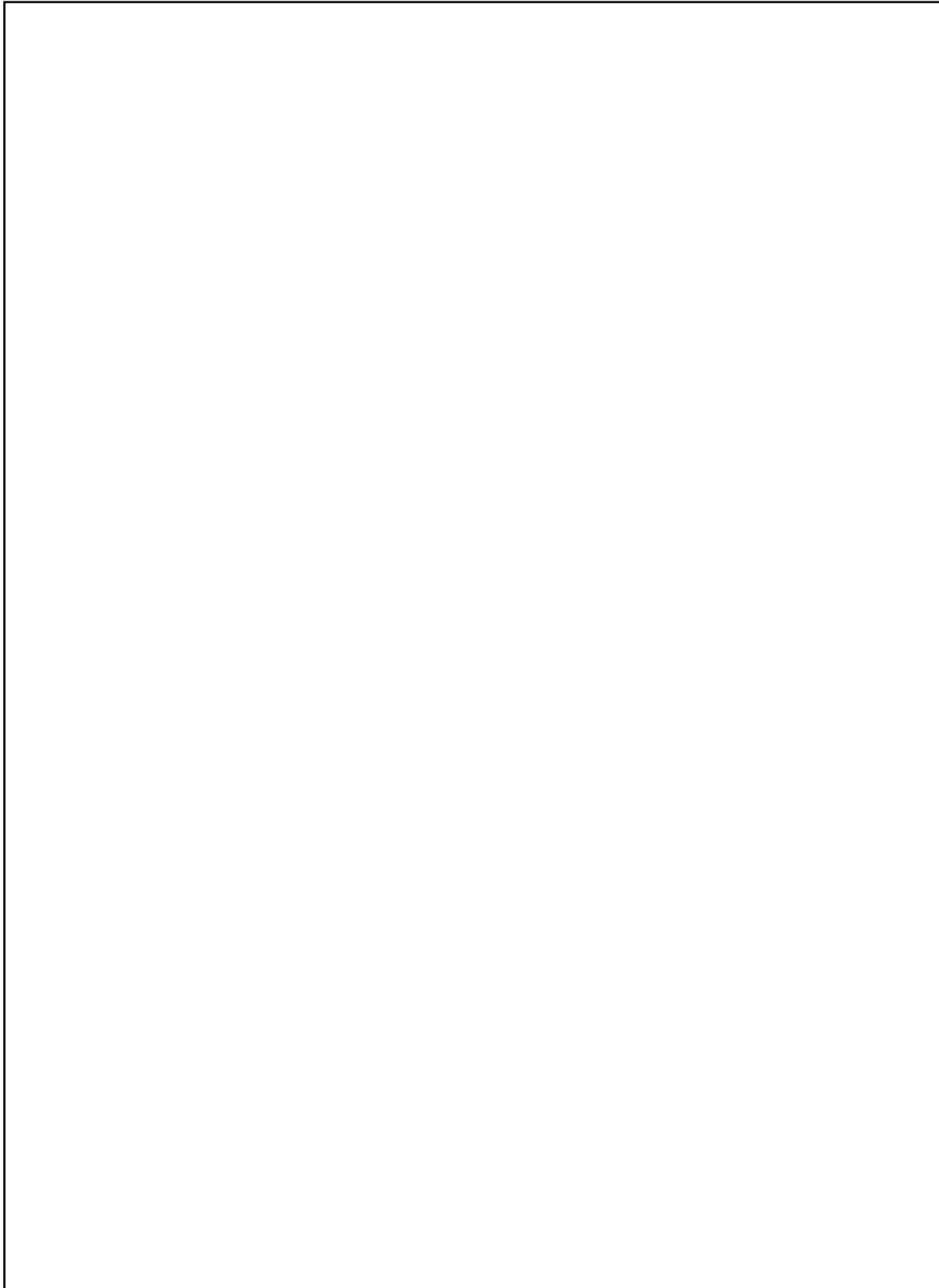
- A lead agency should be formally designated as responsible for developing and implementing wetland policy. The role should be coordinated with that of the administrative authority for the Ramsar Convention. Protocols should be developed to enable the lead agency to work effectively with other interested agencies on wetlands issues.
- There should be a national framework for planning and monitoring for wetland conservation and protection. In summary, the framework should:
 - identify and define New Zealand's response to its obligation under the Convention to formulate and implement planning so as to promote "as far as possible the wise use of wetlands";
 - define national wetland priorities, targets, guidelines, standards, incentives, monitoring, and agency roles;
 - allow regional and local authorities around the country to implement different wetland conservation and protection priorities within a clearly defined framework;
 - address specifically the need to improve the conservation of wetlands on privately owned land, including continual effective wetland advocacy within the Resource Management Act 1991 framework; and
 - provide for adequate monitoring.
- Existing legislative tools (for example, in the Resource Management Act 1991 and the Conservation Act 1987) should be used to implement the framework.
- Parliament should receive more information about how the Ramsar Convention is being implemented. There is in our view room for:
 - more specific information to be included about the Convention, and the resources used in its implementation, in the relevant *Estimates of Appropriations*, departmental forecast reports and annual reports; and
 - a periodic report coordinated by the lead agency, as part of its general advisory role, about the achievement of the Convention's obligations, desired outcomes, and issues.





THE RAMSAR CONVENTION ON WETLANDS OF
INTERNATIONAL IMPORTANCE

Figure 6
Decline in Wetlands in New Zealand

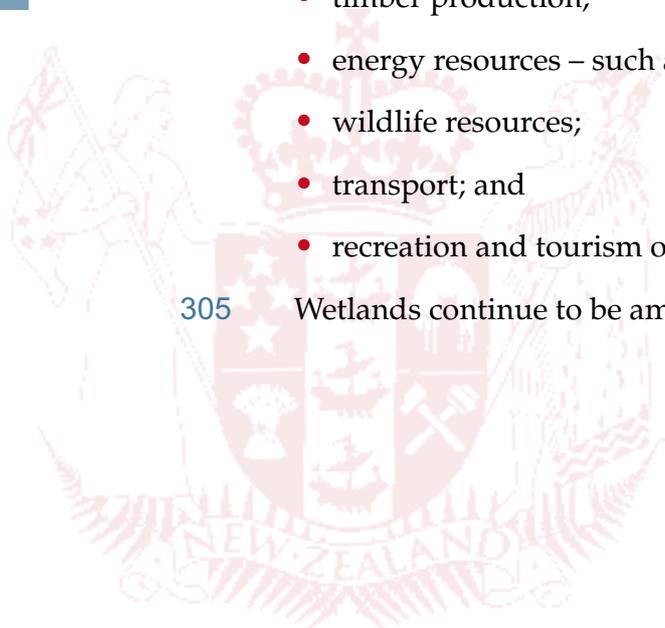




THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

What Are Wetlands?

- 301 Wetlands are areas where water is the primary factor controlling the environment and the associated plant and animal life. Water becomes that primary factor where the water table is at or near the surface of the land, or where the land is covered with shallow water that is permanently or periodically static or flowing, fresh, brackish, or salt.
- 302 As a result, wetlands cover a variety of habitat types – including rivers and lakes, coastal lagoons and estuaries, mangroves, peatlands, marshes, and even human made wetlands such as farm ponds, reservoirs, and sewage ponds.
- 303 Wetlands are among the world’s most productive environments. They:
- are cradles of biological diversity, providing water and other primary means upon which countless species of plants and animals depend for survival;
 - support high concentrations of birds, mammals, reptiles, amphibians, fish and invertebrate species; and
 - are also important storehouses of plant genetic material.
- 304 Wetlands provide substantial economic benefits. For example:
- water supply (quantity and quality);
 - fisheries – over two-thirds of the world’s fish harvest is linked to the health of coastal and inland wetland areas;
 - agriculture – through the maintenance of water tables;
 - timber production;
 - energy resources – such as peat and plant matter;
 - wildlife resources;
 - transport; and
 - recreation and tourism opportunities.
- 305 Wetlands continue to be among the world’s most threatened ecosystems.





THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

What Is the Ramsar Convention?

- 306 The Convention on Wetlands of International Importance – the Ramsar Convention – is an intergovernmental treaty adopted on 2 February 1971 in the Iranian city of Ramsar.
- 307 The reasons for the existence of the Ramsar Convention and an “explanation of its operative part” are reflected in the recitals¹⁰ to the Convention, as set out in Figure 7 below. Over the years the Convention has broadened its scope to cover all aspects of wetland conservation and wise use.
- 308 The Ramsar Convention can be described a “very soft” agreement, in that a country’s decisions to list a site, or manage or not to manage, are not internationally checked or subject to review or international vote.

Figure 7 *Recitals to the Ramsar Convention*

The Contracting Parties

RECOGNIZING the independence of Man and his environment;

CONSIDERING the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl;

BEING CONVINCED that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;

DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future;

RECOGNISING that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;

BEING CONFIDENT that the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with coordinated international action.

10 “Recital” means a preliminary statement in a deed [agreement] showing the reason for its existence and explaining the operative part.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 309 The Convention Secretariat (or Ramsar Bureau), which carries out the day-to-day co-ordination of the Convention's activities, is an independent body administered by the International Union for the Conservation of Nature and Natural Resources (IUCN) based at Gland in Switzerland.

Ratification of the Convention by New Zealand

- 310 The Convention entered into force on 21 December 1975. New Zealand signed the Convention on 13 August 1976 and ratified it on 13 December 1976.
- 311 New Zealand did not enact specific legislation to implement the Ramsar Convention, because existing legislation was considered adequate. As a result, the Convention does not have any express recognition in New Zealand legislation. However, wetlands protection values are addressed in several important statutes – such as the Conservation Act 1987 and the Resource Management Act 1991.
- 312 We have already commented on the dangers of this approach (see paragraphs 126-128 on page 16), which in our view may have contributed to the inadequate administrative arrangements for ongoing implementation of the Ramsar Convention. Legislation containing explicit references to the Convention could have provided an opportunity to more clearly define a national framework for planning, implementing, and monitoring measures to protect wetlands.

Establishing a Framework for Our Examination

- 313 Our role in a performance audit is to examine whether, in our opinion, the resources of the Crown have been used effectively and efficiently in a manner that is consistent with the applicable policy of the Government.
- 314 In the case of the Ramsar Convention, we assumed that the “applicable policy” of the Government is to meet New Zealand's obligations under the Convention in an effective and efficient manner.
- 315 But what does this mean in practice? In our view, effective resource use involves the Government's policy being implemented in such a way that it achieves – or contributes meaningfully towards – the desired outcome of the Convention.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 316 And what is the desired outcome from the Ramsar Convention? For domestic implementation purposes, and using the recitals of the Convention as a guide, we think that the desired outcome is two-fold:
- to stem the progressive encroachment on and loss of wetlands; and
 - to ensure the conservation of wetlands by combining far-sighted, national policies with coordinated international action.
- 317 We used that formulation as the benchmark for our examination. We therefore examined the use of Crown resources in the implementation of the Ramsar Convention in New Zealand, to determine whether those resources have been used:
- *effectively*, i.e. in such a way as to achieve – or contribute meaningfully towards – the desired outcome of the Convention; and
 - *efficiently*, i.e. making the best use of taxpayers' money.

The Obligations and the Agencies Responsible

The Obligations

- 318 The Ramsar Convention obligates New Zealand to do specific things towards achieving the desired outcome. The specific obligations under the Convention are to:
- designate at least one wetland for inclusion in a List of Wetlands of International Importance when signing this Convention;
 - formulate and implement planning so as to promote the conservation of wetlands included in the List and as far as possible the wise use of wetlands in the country;
 - establish nature reserves on wetlands;
 - promote training in wetland research, management, and wardening;
 - consult with other Contracting Parties about implementing the obligations; and
 - [attend] Conferences of Parties to report progress in implementing commitments under the Convention.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

319 New Zealand has clearly played its part in securing the Ramsar Convention’s international aims. But our examination was concerned with the steps taken by New Zealand to implement the Convention within its own territory.

320 In this respect, the Ramsar Convention is unlike the other three we examined. New Zealand has complied with most of the specific obligations – for example, the obligations to designate wetlands of international importance and encourage research. But the key obligation is to:

formulate and implement planning so as to promote the conservation of the wetlands included in the List [of Wetlands of International Importance] and as far as possible the wise use of wetlands in their territory.

321 New Zealand has listed five wetlands under the Ramsar Convention, particulars of which are given in Figure 8 below. These wetlands provide a focus for the work of the Department of Conservation.

*Figure 8
New Zealand Wetlands Listed Under the Ramsar Convention*

| Name of Wetland | Area (in hectares) | When Listed |
|-------------------------------|--------------------|-------------|
| Farewell Spit | 11,388 | 1976 |
| Waituna Lagoon | 3,556 | 1976 |
| Kopuatai Peat Dome | 9,665 | 1989-90 |
| Whangamarino Wetland | 5,690 | 1989-90 |
| Firth of Thames Tidal Estuary | 7,800 | 1989-90 |

322 The Ramsar Convention does not define what the term “as far as possible” means. Instead, it leaves that judgement – deliberately, we think – to each country to determine in the light of its own circumstances. “Soft” obligations of this type are not uncommon in international treaties. But the result is that, for auditing purposes, there is no exact measure of compliance.

Agencies and Responsibilities

323 Three government departments – the Department of Conservation, the Ministry for the Environment, and the Ministry of Foreign Affairs and Trade – have interests in wetlands and/or the Ramsar Convention. So do regional and territorial local authorities. Their respective wetland responsibilities are set out in paragraphs 324-330 below.

Department of Conservation

324 The Department of Conservation is the ‘Administrative Authority’ designated as responsible for implementing the Ramsar Convention. In this capacity, the Department is responsible for preparing New Zealand’s regular reports to the Ramsar Bureau.

325 The Department’s domestic responsibilities include:

- managing the wetlands which are included on the Ramsar list of wetlands of international importance,¹¹ and wetlands on its conservation estate; and
- advocating wetland protection, as part of its general function of advocating the conservation of historic and natural resources¹² (which it performs both generally and in specific cases under the Conservation Act 1987).

326 However, the Department does not have either a sole or an overall responsibility for policy development on wetlands. Instead, it has an overlapping wetland policy responsibility with the Ministry for the Environment.

Ministry for the Environment

327 The functions of the Ministry for the Environment include monitoring the effect and implementation of the Resource Management Act 1991 (including the wetlands provisions in the Act) and providing policy advice to Ministers on environmental matters.

328 The Minister for the Environment and the Minister of Conservation have joint responsibility for wetland policy.¹³

11 See Figure 8 on page 50.

12 Section 6(b), Conservation Act 1987.

13 *National Report of New Zealand for COP7 1999*, page 3, Ramsar Convention Bureau, Gland, Switzerland.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

Ministry of Foreign Affairs and Trade

- 329 The Ministry of Foreign Affairs and Trade advises the Department of Conservation (as the Ramsar Administrative Authority) on international political issues as they affect any Ramsar meetings and provides diplomatic support.

Regional and Territorial Local Authorities

- 330 The Resource Management Act 1991 gives regional and territorial local authorities most of the responsibility for implementing wetland policy in their areas.

Is New Zealand Meeting Its Obligations?

- 331 Initiatives designed to achieve the desired outcome of the Ramsar Convention have resulted in useful progress towards implementing the Convention in New Zealand. Particular progress has been made within the conservation estate and the wetlands on the Ramsar List, and a range of other activities as reported in the Ramsar National Reports. A recent success has been the passage of the Hauraki Gulf Marine Park Act 2000 that aims to integrate the management of the outstanding biology and landscape quality and diversity of the natural, historic, and physical resources of the Hauraki Gulf.
- 332 Nevertheless, our conclusion is that New Zealand's policies and legislative measures for wetlands do not appear to have been successful in meeting the desired outcome of the Ramsar Convention.
- 333 Our literature search revealed the following statements:
- *Pervasive changes to wetland continue throughout the country: the extension of urban settlements on to wetlands; extraction of sand and gravel and reclamation of estuaries, lagoons, lake shores and river margins; draining of on-farm swamps; runoff; encroachment of exotic weeds, broom, lupin, gorse, and willow into terrestrial wetland habitats and planting of spartina on coastal mudflats.*¹⁴

¹⁴ A Directory of Wetlands in New Zealand, 1996, Department of Conservation.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- *The progress of implementation of the National Wetland Policy 1986 has been slow. The main difficulties have been with limited resources and shared responsibility among central and local government as well as private landowners.¹⁵*
- *Less than 10 per cent of the original mosaic of wetland systems remains today. Many of the remaining wetlands have been degraded to varying extents by invasions of alien plants, fish, and waterfowl, modifications to hydrological regimes or barriers to fish migration. The loss of wetland extent and diversity is continuing.¹⁶*

334 We were also concerned by some views we received from Regional Councils on the continuing degradation of wetlands. For example:

- *Wetlands in the region continue to be degraded by activities such as drainage, earthworks, discharge of contaminants, weeds and pests, grazing, loss of riparian vegetation, and channelling of waterways.*
- *Wetlands continue to be drained and degraded through land management practices, including stock access to these areas.*
- *Continuing degradation is widespread across the region.*
- *Most wetlands of high conservation value in [our] region are on public land or a mix of public and private land and most of them are not actively managed and continue to be degraded by surrounding land management practices.*
- *Wetlands are continuing to be degraded in the region. A number of practices are continuing that degrade them. These include illegal drainage, drainage of adjacent land, stock grazing in wetlands, serious aquatic weed infestations, and the contamination of waterways which feed into wetlands from multiple sources.*

335 A Regional Council told us that in the absence of national guidance there is confusion on how local authorities pick up the Ramsar Convention locally, and this must create gaps in what needs to be done to meet the Ramsar obligations.

336 Because of lack of data, it is not possible for us to assess objectively:

- the extent of wetland degradation since New Zealand ratified the Ramsar Convention in 1976; or
- whether being a party to the Convention has helped to slow the rate of degradation.

15 *National Report of New Zealand for COP7 1999*, Ramsar Convention Bureau, Gland, Switzerland.

16 *Environmental Performance Indicators: Proposals for terrestrial and freshwater diversity*, Ministry for the Environment, December 1998, page 72.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

337 There are no comparisons over time of scientific information on water and biological quality or surveys of the wetland areas. Nevertheless, after questioning key professionals and others involved in the protection and management of wetlands, we concluded that there is strong subjective evidence that suggests a failure to achieve the desired outcome of the Convention. This then brings into question the effectiveness of New Zealand's response to it.

Major Obstacles to Implementation

338 We identified four major obstacles to the effective and efficient use of resources for implementing the Ramsar Convention:

- The formulation of New Zealand's national planning legislation gives insufficient direction on wetland conservation values.
- National policy on wetland conservation is inadequate, which causes problems for those who implement our national planning legislation – mostly in regional and local government.
- No single government department has responsibility for wetland policy.
- The Government's ability to influence wetland conservation on privately owned land is limited.

339 Each of these problems is interlinked. We discuss them in turn.

National Planning Legislation

340 The Ramsar Convention requires New Zealand to formulate its national planning so as to *promote . . . as far as possible the wise use of wetlands*. A memorandum to the Cabinet seeking approval to ratify the Convention in 1976 stated that New Zealand could *fulfil the requirements of the Convention within the framework of existing wildlife and reserves policy*.

341 There is no specific legislation aimed at implementing the Ramsar Convention in New Zealand. Instead, the values of the Convention have progressively, but indirectly, been incorporated in general-purpose planning and conservation legislation.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 342 The most important planning statute is now the Resource Management Act 1991. The Act refers to the preservation of wetlands as one of a number of *matters of national importance* that local authorities must recognise and provide for in achieving the purpose of the Act.¹⁷ It also contains some limited references to meeting international obligations generally.¹⁸
- 343 These references are undoubtedly consistent with the Ramsar Convention. The Convention recognises the self-evident truth that wetland preservation must compete with other values in the resource management process. It also allows each country to determine its own level of response to the need for wise wetland use.
- 344 But this is only part of the story. The Ramsar Convention's desired outcome remains relevant. New Zealand legislation contains no direct references either to the desired outcome or indeed to the Convention itself.
- 345 From the various references in legislation to wetland preservation, and the place that wetlands are given in the mix of competing values, one can only infer what New Zealand considers necessary to promote *as far as possible the wise use of wetlands* in its own territory.
- 346 We believe that a defined understanding of the phrase *as far as possible* by New Zealand is needed to put manageable boundaries and priorities around the successful implementation of the Ramsar Convention. Also, in our view, the lack of specific legislative reference to the Convention is a factor contributing to the failure of New Zealand to achieve the desired outcome of the Convention through the formulation of its national planning legislation.
- 347 The problem of achieving the desired outcome is reinforced by the case-by-case and generally adversarial approach of many of New Zealand's resource management processes. A national picture of wetland degradation can be hard to obtain from such a system – which leads into discussion of the second obstacle.

17 Section 6(a). Other New Zealand legislation that contributes significantly to conserving wetlands is the Reserves Act 1977 and the Conservation Act 1987.

18 For example, section 58(f) refers to policies on the implementation of New Zealand's international obligations affecting the coastal environment among those which "may" be included in a national coastal policy statement.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

Inadequate Policy Direction

- 348 New Zealand was not involved with the negotiations of the original text of the Ramsar Convention. The Ministry of Foreign Affairs and Trade believes that the Convention was negotiated before 1971 by overseas non-governmental organisations and the IUCN (see paragraph 309) with the involvement of the former Department of Lands and Survey. The Ministry was first consulted about a later (1983) amendment to the Convention.
- 349 Following the custom of the day, little analytical assessment of the implications of the Ramsar Convention was provided when New Zealand ratified it in 1976 – and none was provided to Parliament. Nowadays, any proposal for approval of a new treaty, or an amendment to an existing treaty, must be supported by a national impact assessment for consideration by both the Cabinet and Parliament.
- 350 The Government approved a national policy on wetlands in 1986. The policy:
- was intended to provide a broad statement of aspirations and intent rather than specific objectives, but not to place any restrictions on the private sector;
 - focused on general principles of preservation and protection of wetlands rather than pragmatic national level directions on priorities, targets, standards and roles; and
 - contains insufficient national direction for full implementation of the Ramsar Convention.
- 351 The Resource Management Act 1991 expressly contemplates national policy direction as a tool for helping regional and territorial local authorities to exercise their planning and resource consent functions effectively and to meet the objects of the Act. However, it does not provide detailed national policy covering wetland priorities and targets.
- 352 The Conservation Act 1987 provides for a regional level of guidance, but we believe that it too is not effective for setting national priorities in wetland protection.
- 353 Both the Ministry for the Environment and the Department of Conservation acknowledged to us that New Zealand has no single, coherent national policy statement covering all wetlands.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 354 A national level direction for local authorities for saltwater wetlands is contained in the National Coastal Policy Statement (issued under the Resource Management Act 1991). Some conservation management strategies and plans issued under the Conservation Act 1987 also address wetland issues.¹⁹ Regional and local authorities must take account of these documents in their planning processes. There is also potential for regional wetland issues to be addressed in freshwater fisheries management plans and similar documents.²⁰
- 355 However, we found no national level policy direction on freshwater wetlands, other than the insufficient and rather dated 1986 policy mentioned in paragraph 350.
- 356 A national policy statement covering freshwater wetlands under the Resource Management Act 1991 would meet the need for the national framework. We appreciate that the existing National Coastal Policy Statement already does this for coastal wetlands.
- 357 In our view, the lack of an adequate single national framework policy on wetlands creates a risk that the nationally important value of wetland protection²¹ is being under-recognised as the Resource Management Act is implemented at regional and local level. This under-recognition may be substantially limiting New Zealand's ability to achieve the desired outcome of the Convention in the implementation of its national planning legislation.
- 358 The lack of a clearly defined national policy covering all wetlands also, in our view, means that New Zealand cannot report properly to the Ramsar Bureau on meeting all the obligations. This leads to our next concern about responsibility for developing national policies.

19 For example, in relation to the preservation of the habitat of the bittern, a wetland bird.

20 For example, sports fish and game management plans.

21 Section 6(a), Resource Management Act 1991.





THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

Divided Agency Responsibility

359 We found evidence of a lack of understanding of clearly allocated responsibility on wetland matters among government departments.

360 Some progress has been made under the shared responsibility approach. For example:

- The Department of Conservation has established a National Wetlands Co-ordination Committee. The objective of the Committee is “to meet commitments under the Ramsar Convention and coordinate inter-agency wetlands and conservation efforts”. The Committee includes 11 representatives of non-governmental organisations, landowners and local government associations, local authorities, and other departments with an interest in wetlands.
- The Ministry for the Environment has, with the Department of Conservation’s support, recently produced a draft action plan for sustainable water management in New Zealand. The draft plan identifies a number of priorities for water management issues that could contribute to the restoration of degraded wetland systems – for example, addressing the impact of abstraction of ground water on stream quality.
- The New Zealand Biodiversity Strategy released in February 2000²² includes the following action plan item:

Develop clear national criteria for protecting and managing biodiversity in wetlands ... through a review of the 1986 Wetlands Policy ... and incorporate in a national policy statement on biodiversity.

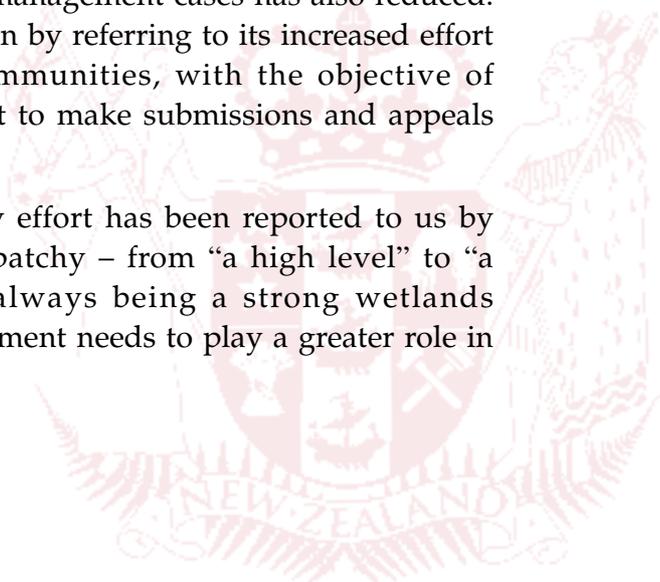
- The Ministry for the Environment has developed an Environmental Performance Indicator for fresh water, to measure and report how well New Zealand is looking after this environmental asset. The Ministry piloted and initiated implementation of the indicator in the year ended 30 June 1999. Further work on indicators for wetlands is continuing with the assistance of the Department of Conservation and local authorities.
- The Ministry for the Environment is involved in a joint project with the United Nations Environment Programme and Lincoln Environmental Limited by the name “Coordinated Monitoring of New Zealand Wetlands”.

22 Prepared by the Department of Conservation and the Ministry for the Environment, ISBN 0-478-21919-9.



THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 361 In other respects, however, progress has been limited:
- The Department of Conservation undertook to the Ramsar Secretariat in 1998 to produce a national Wetlands Action Plan by December 1998. The plan was to identify priority actions to protect and restore high-value wetland ecosystems and freshwater habitat. Its objective was to “identify priority actions to protect and restore high value wetland ecosystems and freshwater fish habitat”. The plan has not been produced.
 - The Ministry for the Environment’s draft action plan for sustainable water management identifies wetland loss and the restoration of important but degraded wetland systems as a secondary priority, on which the Ministry will not focus for another five years.
 - Despite its responsibility to monitor the effect and implementation of the Resource Management Act 1991, the Ministry for the Environment has produced only one monitoring report – a qualitative snapshot called *State of the Environment 1997*.
 - The Department of Conservation cannot yet comment on the adequacy of protection of wetlands on private land, due to lack of monitoring. This creates difficulties for reporting on the progress, adequacy, and effectiveness of current wetlands activity and resource requirements to achieve the desired outcome.
- 362 Despite the intention expressed in the New Zealand Biodiversity Strategy, no decision has yet been made on whether to proceed with a national policy statement covering wetland conservation.
- 363 Expenditure by the Department of Conservation on its advocacy role has reduced by 30% over the last three years. The number of submissions made by the Department in resource management cases has also reduced. The Department explains this reduction by referring to its increased effort on working cooperatively with communities, with the objective of reducing the need for the Department to make submissions and appeals in resource consent cases.
- 364 However, the Department’s advocacy effort has been reported to us by Regional Councils to be somewhat patchy – from “a high level” to “a constantly low level” and from “always being a strong wetlands conservation advocate” to “the Department needs to play a greater role in advocacy on private land”.





THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 365 We think that there is a significant risk at regional council resource consent hearings – especially in the absence of an adequate national policy – that if the Department of Conservation does not advocate for freshwater wetlands protection, the case for wetlands protection may not be put. There is a consequential risk that regional councils will consider and decide solely or mainly on the basis of the argument favouring wetland modification – with possible adverse impacts on achievement nationally of the Ramsar Convention obligations.
- 366 In our assessment, there is inadequate allocation of wetland policy responsibility for the national implementation of the Ramsar Convention between the Department of Conservation and the Ministry for the Environment. We consider that this has contributed to the unsatisfactory lack of a useful national wetland policy and the ineffectiveness in meeting the desired outcome of the Convention.
- 367 These deficiencies have significant implications for:
- accountability;
 - the effectiveness and efficiency of the use of taxpayer resources; and
 - New Zealand’s ability to comply with its obligations under the Ramsar Convention, including its reporting obligations.

- 368 The OECD said in its 1996 *Environmental Review of New Zealand*:

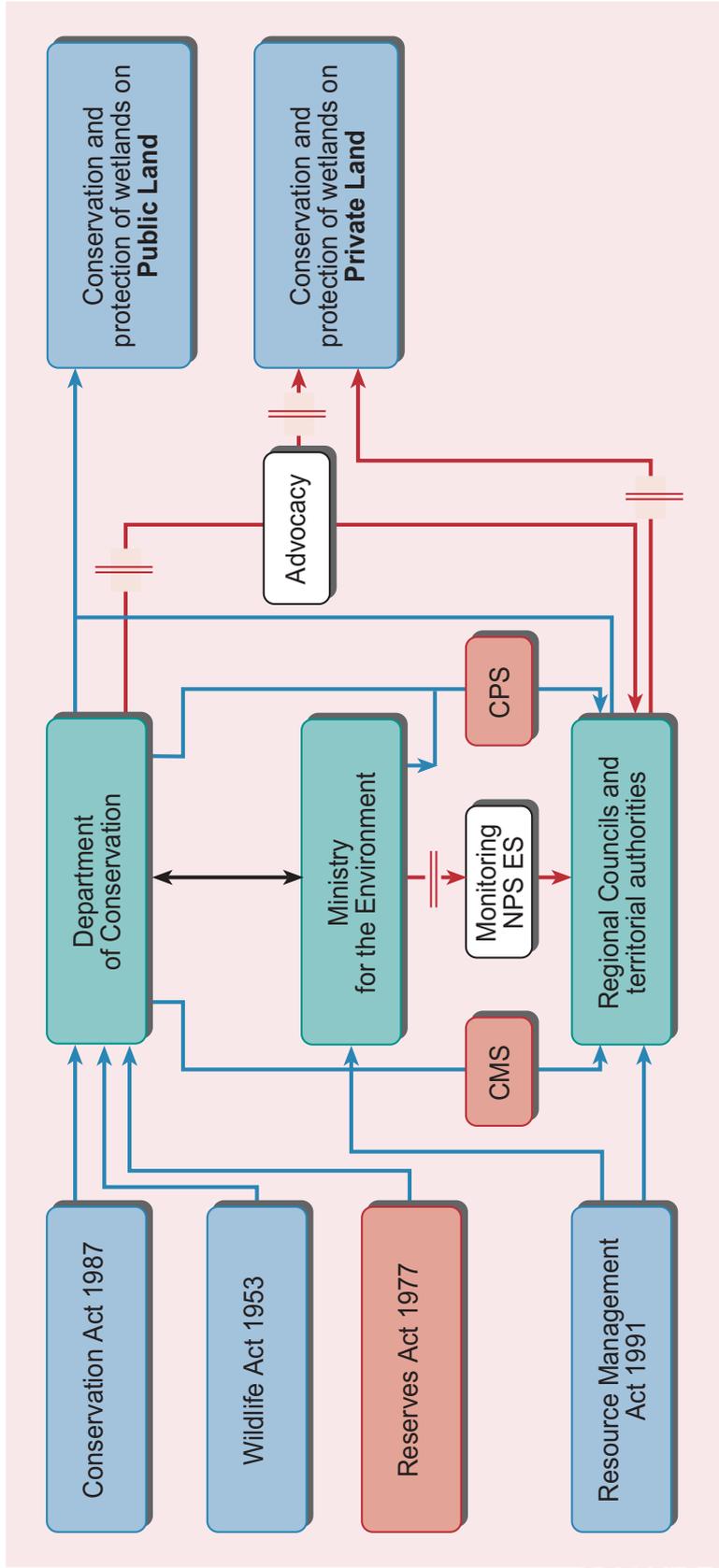
The quasi-absence of quantified and dated national objectives and the many gaps in environmental data make accountability elusive at the national level.

Privately Owned Land

- 369 In paragraphs 332-334 we refer to the continuing degradation of wetlands, especially on private land. The legislative and administrative structure in New Zealand creates an obstacle for public bodies to influence wetland conservation and preservation on private land. This is illustrated in Figure 9 on page 61.
- 370 Achieving public conservation goals on privately owned land is, of course, far more difficult than on land which is in public ownership. Parliament must balance the advantages of achieving those goals coercively against the detriments of interfering with private property rights. In other respects, the State can only seek to exercise influence on private landowners through due process (for example, under the Resource Management Act 1991) and by other indirect means.

THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

Figure 9
Legislative and Administrative Structure Relating to Wetlands on Public and Private Land



Notes:

- The blue lines represent effective channels of action.
- The red lines and broken red lines represent sometimes ineffective channels of action.
- CMS: Conservation Management Strategies.
- NPS: National Policy Statement.
- ES: Environmental Standards.
- CPS: Coastal Policy Statement.

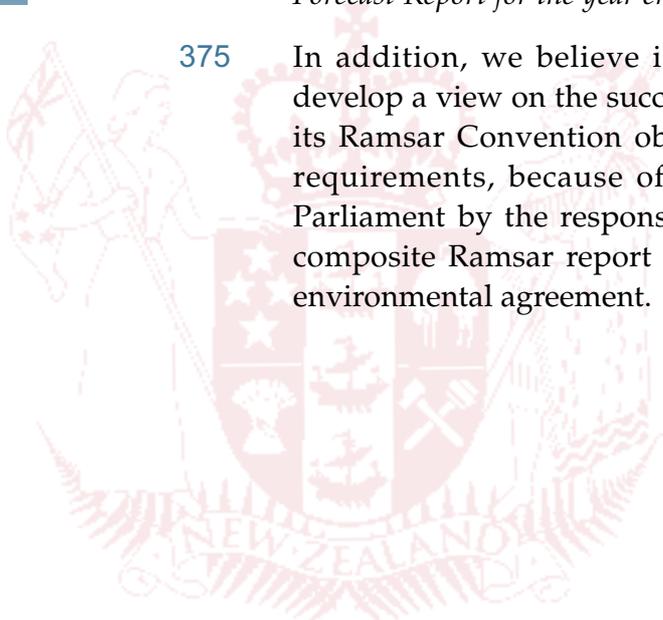


THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 371 The Department of Conservation has some tools by which it can exercise influence on private landowners. They include its:
- role as an advocate – both generally and through the Resource Management Act 1991;
 - powers to produce conservation management strategies and their associated conservation management plans – which regional and district councils must take into account in their planning processes under the Resource Management Act 1991; and
 - functions in respect of freshwater fisheries management plans.
- 372 However, the Department of Conservation has not developed any specific strategy to enable its wetland priorities, or New Zealand’s international obligations, to be met on privately owned land.
- 373 The Ministry for the Environment potentially has a stronger role than the Department of Conservation in influencing freshwater wetlands conservation on private land. The Ministry could introduce a national policy statement under the Resource Management Act 1991 covering freshwater wetlands. A national policy statement would have regulatory force and local authorities would have to implement it.

Reporting to Parliament

- 374 Parliament has an ongoing interest in international treaty implementation, through appropriate checking and the receipt of reports. We observed that the Ramsar Convention was mentioned in only one departmental governance or accountability document – the Department of Conservation’s *Forecast Report for the year ending 30 June 2000*.
- 375 In addition, we believe it is unnecessarily difficult for Parliament to develop a view on the success or otherwise of New Zealand’s fulfilment of its Ramsar Convention obligations, any associated issues, and resource requirements, because of the piecemeal and incomplete reporting to Parliament by the responsible agencies. Presentation to the House of a composite Ramsar report would assist Parliament’s appreciation of this environmental agreement.





THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE

- 376 We also believe it is difficult to report effectively on the implementation of the Ramsar Convention because of the cumulative effects of:
- the lack of a national level framework;
 - the lack of a defined understanding of the “as far as possible” priorities and targets for wetlands; and
 - the lack of effective wetland monitoring.
- 377 We are not aware that the Ramsar Bureau has commented on New Zealand’s implementation of the Ramsar Convention. Neither would we expect such comment given the “soft” nature of the Convention and its lack of mandatory compliance mechanisms. However, in our view the quality of reporting should be improved, in order to give Parliament a view on New Zealand’s progress.



Part Four

The Convention on International Trade in Endangered Species of Wild Fauna and Flora



Conclusions and Recommendations

Conclusions

- New Zealand ratified the Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES – in 1989. Parliament was not involved in the debate about ratification, and there was no prior comprehensive impact evaluation. However, specific legislation was introduced in the form of the Trade in Endangered Species Act 1989. That Act defines responsible agencies' roles and mandates and empowers the agencies to carry them out. There is clear agency role definition, and effective co-operation. (*Paragraphs 414-415 and 424*)
- New Zealand's obligations under CITES are being successfully implemented under the leadership of the Department of Conservation. The key success factors are:
 - the specific legislation for CITES (*paragraph 414*);
 - the clear inter-agency roles and relationships (*paragraphs 418-420*);
 - the close co-operation between the agencies (*paragraph 423*); and
 - the focused work of the small interdepartmental Wildlife Enforcement Group (*paragraph 430*).
- The Department of Conservation has difficulty determining if some birds proposed for export have been legally bred in captivity or illegally imported. Therefore, there is a risk that obligations for controlling the export of CITES-listed species from New Zealand are not being fulfilled, and export permits are being wrongly issued. (*Paragraphs 435-439*)

Recommendations

- The Trade in Endangered Species 1989 Act was amended in 1998 to permit the taking of DNA samples from animals to test whether they have been bred in captivity. The protocols required to operate this measure are being developed. We recommend that the Department of Conservation should give priority to the protocols, so that samples for DNA examination can be taken from birds proposed for export where breaches of CITES are suspected.



THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

- We also recommend that Parliament be provided annually with a fuller picture of issues and progress in implementing CITES.
- The Department of Conservation should examine the opportunity to reduce New Zealand's CITES border examination of personal effects for illegal CITES imports while still meeting the CITES obligations.



What Is the Convention on International Trade in Endangered Species?

- 401 In some countries, some wild plant and animal species have very high market values that provide a strong incentive for trading them or specimens from them. If there are not many members of those species left, and such trade is not controlled, it could contribute towards the species' extinction. The international wildlife trade is a highly lucrative business, and unrestricted commercial exploitation is a major threat to the survival of some species.
- 402 CITES is the only international treaty that has a focus on protecting wild plant and animal species from unregulated trade. It provides varying degrees of protection for wild animals and plants, depending on how many of them there are and how much damage international trade will do to them. A permit system is operated to monitor and control trade in CITES-listed species, their parts and by-products.
- 403 The Secretariat for CITES is now administered by the United Nations Environment Programme (UNEP) and is located in Geneva, Switzerland. The Secretariat helps countries that have ratified CITES to implement it.
- 404 CITES has three appendices dealing with lists of protected species:
- Appendix I lists *endangered species* facing extinction that are to be protected from all international commercial trade. Commercial trade in wild specimens of these species is prohibited.
 - Appendix II lists *threatened species* that can be traded in a regulated way. These are species not yet facing extinction, but that are considered to be at risk if trade is unregulated. International trade in these species is permitted with the correct permit or certificate documentation.
 - Appendix III provides the option to list *exploited species* already protected within a country – if the country wants them listed, because the cooperation of other countries is needed.
- 405 Countries that have ratified CITES (Parties) work together to ensure that wildlife trade is carried out in accordance with the agreement. The Conference of Parties meets every two years and reviews its implementation, including considering amendments to Appendices I and II. At 7 September 2000, there were 152 Parties.
- 406 CITES does not seek to ban all trade in wildlife and wildlife products. Rather, it seeks to ensure that trade does not contribute to the extinction of animals and plants. It has brought a wide measure of control to wildlife trade, and this control is considered to be improving.



THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Ratification of CITES by New Zealand

Why Did New Zealand Ratify CITES?

- 407 New Zealand did not attend the 1973 Washington Conference that drew up CITES, and was therefore not involved in developing the initial text. CITES first entered into force in 1975 in other parts of the world.
- 408 New Zealand considered ratifying CITES for about 10 years before finally doing so in 1989, after conflicts between the CITES and international quarantine agreements had been resolved.²³
- 409 There was no prior comprehensive impact evaluation of CITES, though the departments that recommended ratification noted that (in practice) New Zealand had been following the intent of CITES for some time. New Zealand was already required by those trading partners that were parties to CITES to conform to its standards in respect of trade with those countries entailing the issue of certificates to facilitate the trade, without which the importing country would not accept shipments from New Zealand.
- 410 The main reasons for New Zealand's decision to ratify CITES were the importance of the country's international standing and relations. In particular, New Zealand's absence from CITES was considered inconsistent with its otherwise strong reputation for the conservation of endangered species. The case made by conservation groups was also influential.

Was Parliament Consulted?

- 411 Discussion about New Zealand's position on CITES was extensive in the years before ratification, but did not involve Parliament. Parliament was not given the opportunity to consider the impacts of CITES, or to examine the reasons for the delay in ratification during the years of discussion with the CITES Secretariat.
- 412 However, conservation groups and government agencies were extensively involved in the debate. The Minister of Conservation and the Department of Conservation received a number of representations from New Zealand conservation groups in favour of accession, and these were reported in a Memorandum to Cabinet in June 1987.

²³ Memorandum from the Secretary of Foreign Affairs to the Ambassador, New Zealand Embassy, Bonn, 11 September 1981.



THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

413 All key government departments of the day were consulted – Customs Department, Lands and Survey, New Zealand Forest Service, Agriculture and Fisheries, Department of Scientific and Industrial Research, Foreign Affairs, Trade and Industry (now the Ministry of Economic Development), and the Commission for the Environment.

Legislation Underpinning CITES

414 New Zealand ratified CITES on 8 August 1989, after the Trade in Endangered Species Act 1989 was passed. The purpose and objectives of the Act are (respectively) to:

- *Further the protection and conservation of endangered species of wild fauna and flora by regulating the export and import of such species and any product derived from those species.*
- *Enable New Zealand to fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and to promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species.*

415 The Trade in Endangered Species Act also:

- prescribes agencies' functions, mandates, and the powers and penalties required to enforce CITES; and
- declares, appoints and empowers Endangered Species Officers with powers of arrest, rights of entry, and powers of search – for the inspection and examination of any specimen of an endangered, threatened or exploited species arriving in New Zealand and any associated permits and certificates, and seizure of specimens imported in non-compliance with the Act.

416 Before the Trade in Endangered Species Act, the Secretary for Internal Affairs acting under the Wildlife Act 1953 had banned the export of CITES-listed birds from New Zealand. However, a High Court decision in June 1988 held that this blanket prohibition was not actually supported by the Wildlife Act. The Trade in Endangered Species Act established new statutory criteria under which birds, and other CITES-listed species, could be legally imported into and exported from New Zealand.



THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The Obligations and the Agencies Responsible

The Obligations

- 417 CITES requires New Zealand to:
- take appropriate enforcement measures in New Zealand, and to prohibit trade in specimens in violation of CITES;
 - maintain records of trade in specimens of species included in its Appendices I, II, and III;
 - prepare periodic reports on New Zealand's implementation for the CITES Secretariat;
 - establish a Management Authority to administer the CITES permitting system, and attend biennial Conferences of Parties; and
 - establish a Scientific Authorities Committee to monitor and advise the Management Authority.

Agencies and Responsibilities

- 418 The Department of Conservation has lead responsibility for meeting the obligations, and is the CITES Management Authority.
- 419 The Ministry of Agriculture and Forestry and the New Zealand Customs Service monitor New Zealand's borders.²⁴
- 420 The Ministry of Foreign Affairs and Trade:
- accompanies the Department of Conservation to the CITES Conferences of Parties and other international meetings;
 - negotiates changes to the agreement on behalf of New Zealand;
 - gathers political intelligence by talking to other Parties through its overseas posts, and maintains diplomatic contact with the CITES Secretariat in Geneva; and
 - is consulted on any paper to the Cabinet on any proposed changes to the terms of CITES.

²⁴ Trade in Endangered Species Act 1989, sections 35 and 38A.

THE CONVENTION ON INTERNATIONAL TRADE IN
ENDANGERED SPECIES OF WILD FAUNA AND FLORA





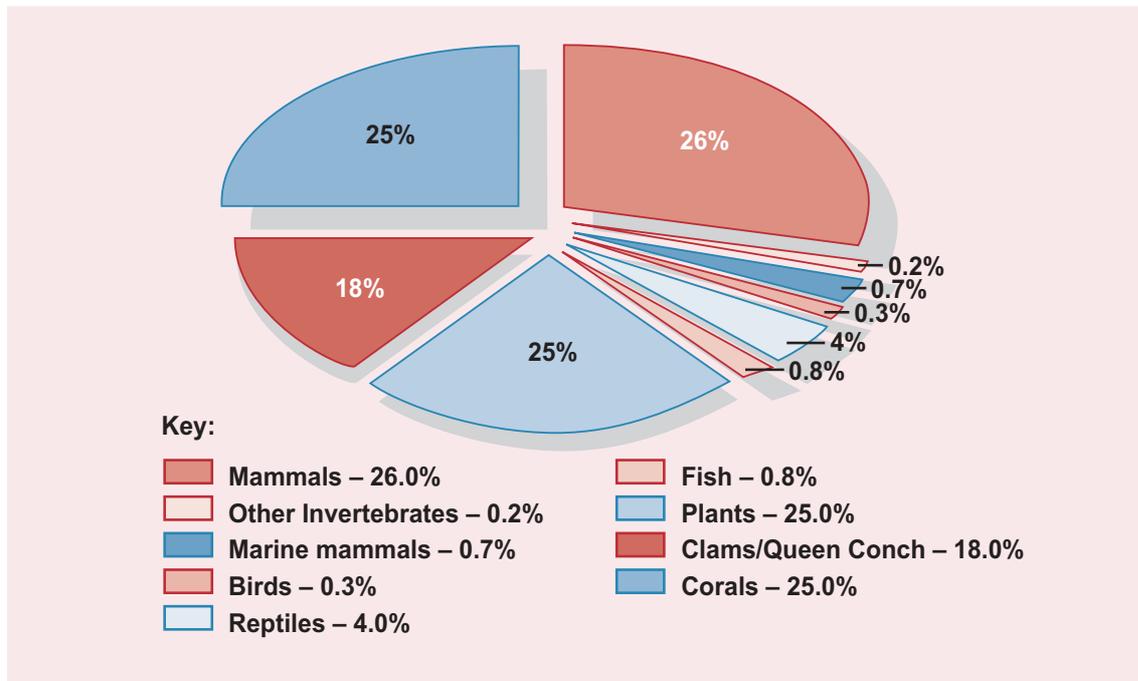
THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Is New Zealand Meeting Its Obligations?

- 421 New Zealand is compliant with the second to the fifth obligations listed in paragraph 417 by:
- the Department of Conservation maintaining the records required by CITES;
 - the Department of Conservation preparing annual reports for the CITES Secretariat;
 - the Department of Conservation being the CITES Management Authority; and
 - the Scientific Authorities Committee being established in 1991.
- 422 New Zealand is compliant with the first obligation to take appropriate enforcement measures and to prohibit trade in violation of CITES, as described in paragraphs 423-433.
- 423 The Ministry of Agriculture and Forestry and the New Zealand Customs Service have inspection staff at all of New Zealand's international sea and air ports. Since 1989, these agencies have undertaken the day-to-day border monitoring of CITES trade, and inspections for CITES-listed items for the Department of Conservation. The CITES monitoring and inspection by the Ministry fits conveniently with its other border protection and quarantine activities.
- 424 The monitoring and inspection, and the working relations between the three agencies mentioned in paragraph 423, are underpinned by a Memorandum of Agreement and an associated Service Standard, and a Memorandum of Understanding. There appear to be good working relations between the three agencies.
- 425 Goods and personal effects imported into New Zealand are sampled for compliance with the Trade in Endangered Species Act 1989. For some arrivals by aircraft – for example, from high-risk countries – every item is checked. The inspectors refer any suspect items they find to the Department of Conservation for a decision.
- 426 In the year ended June 1999, a total of 28,014 specimens or items were surrendered or seized at the border. Figure 10 on the next page shows the types of illegal imports.

THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Figure 10
Illegal Imports of Fauna and Flora in 1999



- 427 Coral and clamshells comprised 43% of the illegal imports during 1999, arriving mostly from the Pacific Islands and South East Asia. The other significant groups of illegal imports were musk deer products, turtles and tortoises, and plants – especially costos root, orchids, and American ginseng.
- 428 Generally, most (about 95 per cent) of the items surrendered or seized at the border are for personal use, carried by people judged to be unaware they were acting illegally. Cases include document omissions from the originating country's Management Authority that could have been remedied had the person carrying the item known the requirements, and been able to seek an export permit.
- 429 Canada, the United States of America, and the European Union now exempt personal effects from CITES enforcement, with a subsequent reduction in the CITES workload at the border. Australia currently has similar CITES border practices to New Zealand.
- 430 In addition to the border monitoring and inspection, an interdepartmental group called the Wildlife Enforcement Group was established in 1993 to stop organised illegal trade in fauna and flora into and out of New Zealand. The Group is composed of one member from each of the Ministry of Agriculture and Forestry, New Zealand Customs Service, and the Department of Conservation. It is well organised, adequately supported by the parent departments, and has a clear, well-documented role.



THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

- 431 The Wildlife Enforcement Group has about three or four major operations under way at any one time. Its work leads, on average, to one major prosecution a year, and may contribute information and evidence to prosecutions overseas. The members of the Group cooperate closely with their overseas wildlife-enforcement counterparts, especially in Australia. Shared intelligence and mutual support help to fight illegal trading in wildlife.
- 432 A successful prosecution in January 2001 followed from suspicions of Department of Conservation staff who alerted the Wildlife Enforcement Group. Two visitors travelled around New Zealand searching for and finding a pair of green geckos that they tried to take out of the country. One of the visitors was charged with attempting to export totally protected wildlife, pleaded guilty, and was fined \$12,000. The penalties for this sort of offence have recently been increased to a maximum of \$100,000 plus \$5,000 per animal, or six months in prison.
- 433 The CITES Secretariat in Geneva provides confirmation of the validity of export permits and certificates to lessen the possibility of counterfeit or falsified documents being used for illegal imports. The Secretariat holds copies of all Management Authorities' authorised signatories and advises member countries of any doubt about the validity of permits and certificates for imports.

Monitoring by Non-government Organisations

- 434 Non-government organisations such as TRAFFIC²⁵ act as watchdogs on government activities. TRAFFIC tests a country's systems and reports to the biennial CITES Conference of Parties.
- 435 TRAFFIC published a report in April 1997²⁶ about the trade in CITES-listed birds to and from New Zealand. The report says that:

There is serious concern amongst both conservationists and government officials that a large number of CITES-listed birds are smuggled into New Zealand and then claimed to be bred in New Zealand in order to obtain an export permit for these birds.

²⁵ The TRAFFIC Network is the world's largest wildlife trade monitoring programme with offices covering most parts of the world (the closest office to New Zealand is in Sydney). TRAFFIC is a programme of the World Wide Fund for Nature (WWF) and the World Conservation Union (IUCN) established to monitor trade in wild plants and animals. It works in close cooperation with the CITES Secretariat. Email: traffico@msn.com.

²⁶ *Trade in CITES-listed birds to and from New Zealand*, Edited by J Holden, April 1997, pages 6 and 20.



THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

New Zealand may be being used as a laundering point for the legal export of illegally obtained non-native CITES listed birds. Although the actual extent of this activity cannot be ascertained, case history has revealed a highly organised crime and the operation of international smuggling networks. Increasing numbers of non-native CITES-listed birds are being exported from New Zealand under the claim they have been bred in captivity.

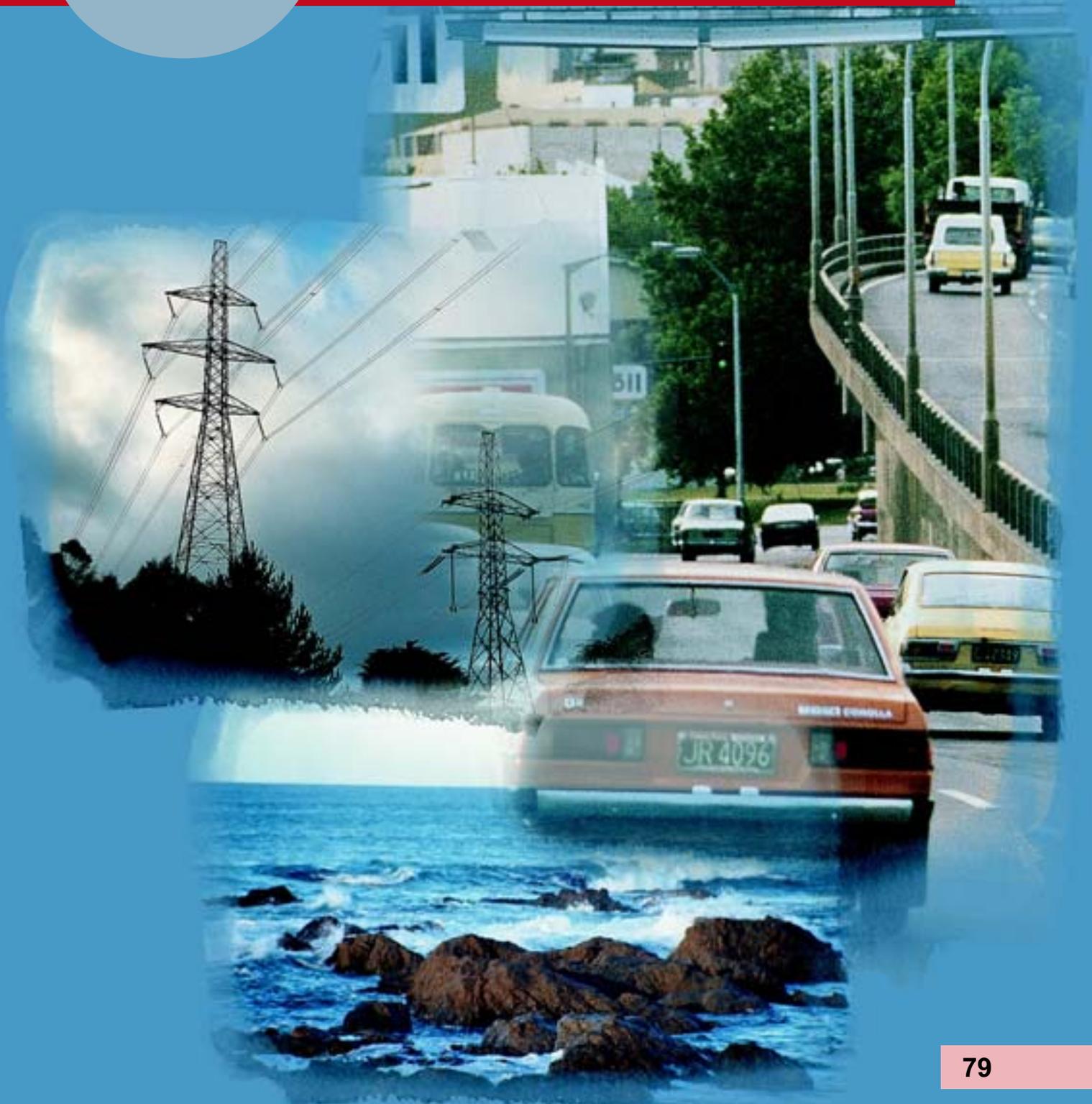
- 436 The problem that New Zealand's authorities face is in obtaining proof that birds intended for export and claimed to have been bred in captivity have in fact been bred in captivity. No comprehensive records exist of the numbers of aviculturists in New Zealand, or the numbers, species and breeding status of the birds that they hold.
- 437 It is therefore not possible even to estimate the potential of New Zealand aviculturists to produce captive birds for export. For example, a small number of listed Australian parrot species may have been legitimately bred in captivity, but equally might have been illegally smuggled into New Zealand for export to other countries.
- 438 DNA examination of birds proposed for export is a potentially valuable tool for checking whether they have been bred in New Zealand, and has been used successfully for this purpose in other countries. The Trade in Endangered Species Act 1989 was amended from 1 April 1998 to permit the Department of Conservation to take samples of DNA where there is reasonable cause to suspect that an animal has not been bred in captivity.
- 439 DNA examination has not yet been used in New Zealand. The protocols required to operate it are currently being developed.

Reporting to Parliament

- 440 Parliament has an interest in receiving regular information about the implementation of international treaties in New Zealand. This information can be provided through the annual *Estimates of Appropriations*, forecast reports, select committee financial reviews, annual reports, and other reports.
- 441 The Department of Conservation has a separate Output Class for CITES activities, and CITES achievements are separately reported to Parliament in the Department's annual report, *Estimates of Appropriations*, and forecast report. These avenues provide an opportunity for Parliament to consider ongoing implementation, maintenance, and achievements under CITES.
- 442 We consider that the Department of Conservation could usefully expand reporting of its activities under CITES in its annual report, which currently reports only the number of illegal CITES import interceptions.

Part Five

The Framework Convention on Climate Change and the Kyoto Protocol



Conclusions and Recommendations

Conclusions

New Zealand ratified the Framework Convention on Climate Change – FCCC – without adequate information.

- In 1992 New Zealand agreed to implement the FCCC. The ratification recommendation to the Cabinet appears to have met the criteria of the day, although by today's standards it was inadequate. It did not cover the costs of implementing the FCCC in New Zealand. For example, no information was provided on the likely cost increases for fuel, building, waste disposal, electricity generation, and industrial processes. (*Paragraph 513*)

New Zealand is meeting the FCCC obligations except the first and most important one.

- New Zealand *has not* fulfilled the main FCCC obligation to formulate and implement national policies to mitigate climate change through limiting human-induced emissions of greenhouse gases. A range of policy measures has been adopted, but the measures have been ineffective. (*Paragraphs 561-564*)
- The lack of progress is despite intense policy debate on climate change since ratification in 1992. Views on the FCCC have been polarised among government departments and there has been a lack of incentive to reach a satisfactory accommodation that would allow progress. (*Paragraphs 555-558*)
- However, over recent months there has been evidence of broader agreement with, for example, unanimous recommendations appearing in the climate change recommendations to Government in papers to Cabinet. (*Paragraph 559*)
- New Zealand agreed to aim at reducing human-induced greenhouse gas emissions to 1990 levels by the year 2000. However, gross emissions of carbon dioxide (the main greenhouse gas) have so far increased by 19% over that period. If all greenhouse gas emissions and not only CO₂ are considered, then the increase is 4.8%. (*Paragraphs 561-562*)



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

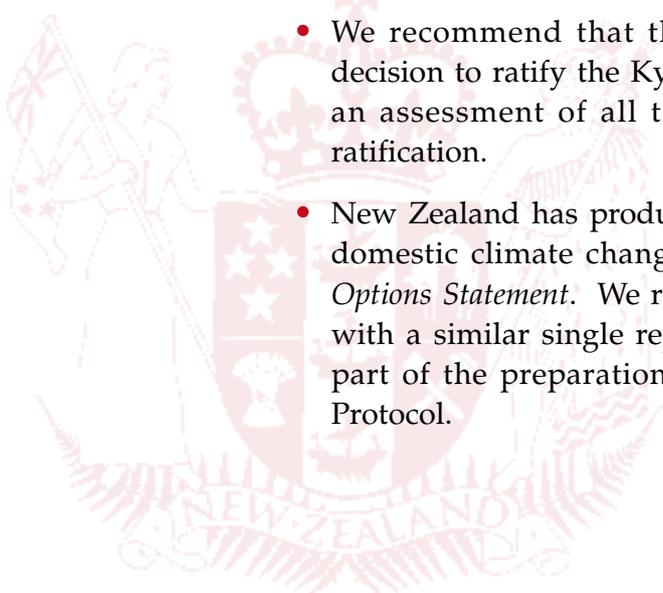
- New Zealand *is* meeting the FCCC obligations to:
 - provide detailed, annually updated, inventories of greenhouse gas emissions and sinks information (“sinks”, such as forests, absorb carbon dioxide) (*paragraph 570*);
 - promote climate change research (*paragraphs 568, 576-577*);
 - provide money to help developing countries meet their obligations under the Convention (*paragraphs 578-579*); and
 - promote climate change education, training, and public awareness (*paragraphs 580-581*).

Parliament is not given a clear picture of climate change issues and progress.

- Individual agencies responsible for climate change matters report separately to Parliament. There is no single report or process that pulls together all this separately reported information to provide Parliament with a clear picture of climate change issues and progress. (*Paragraphs 582-583*)

Recommendations

- Climate change is complex and wide ranging, and requires an effective “whole of government” approach to assist in resolving inter-agency differences on policy. We recommend that the accountabilities of the main agencies concerned with climate change should be expanded to encompass a requirement to collaborate with other agencies in achieving demonstrable progress on climate change obligations.
- We recommend that the national impact analysis supporting any decision to ratify the Kyoto Protocol should, as far as possible, include an assessment of all the direct and indirect costs and benefits of ratification.
- New Zealand has produced a wide-ranging consultation document on domestic climate change policy in its *Climate Change Domestic Policy Options Statement*. We recommend that Parliament should be provided with a similar single report on climate change issues and progress as part of the preparation for New Zealand’s ratification of the Kyoto Protocol.

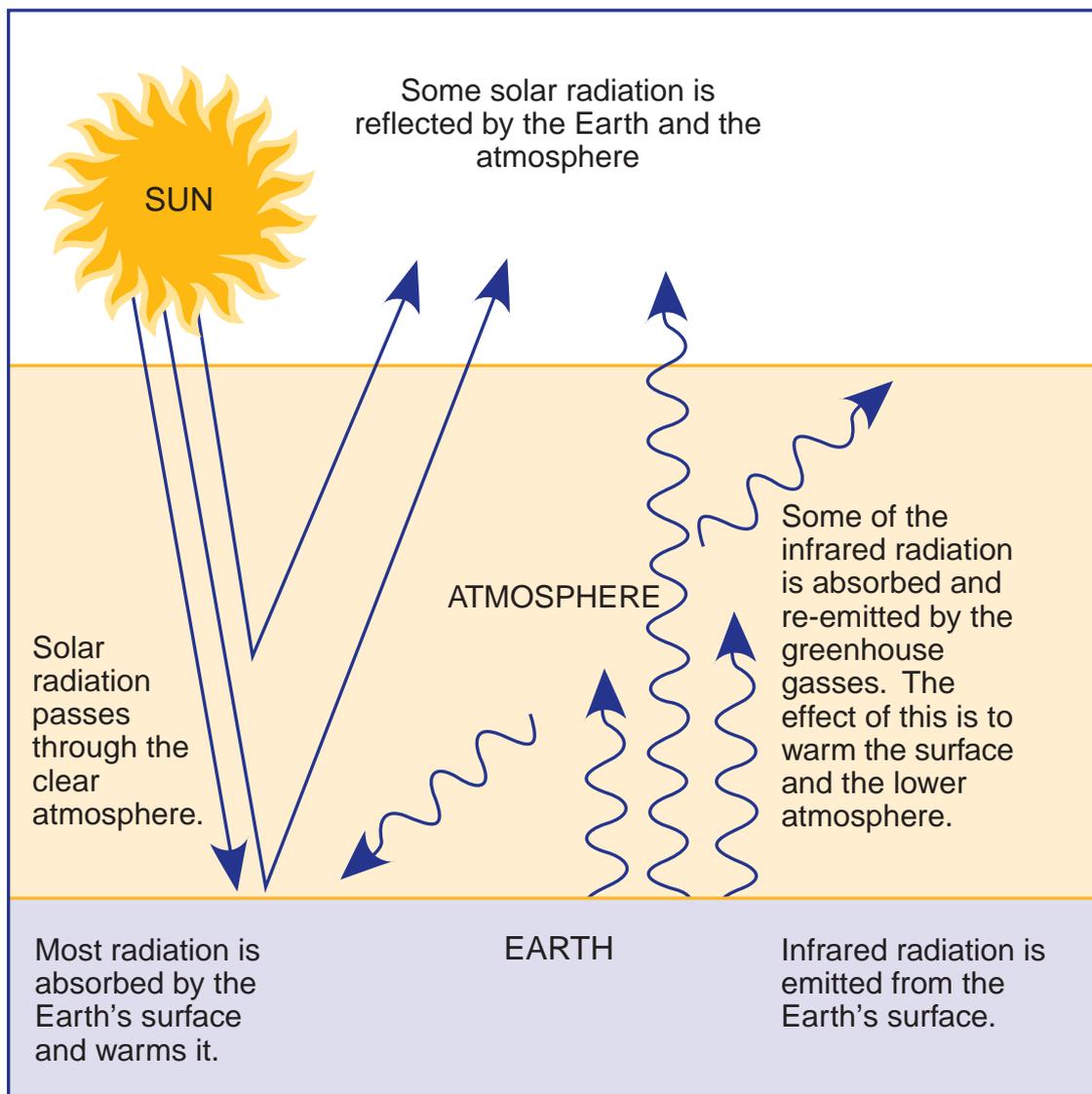




THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

- We also recommend that the main agencies concerned with climate change provide Parliament with a regular joint report on how New Zealand is meeting its FCCC obligations. The report should:
 - provide a single source of information on agency performance;
 - explain how New Zealand is meeting its international obligations; and
 - inform Parliament by outlining new policy developments and issues.

Figure 11
The Greenhouse Effect





THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

What Is the Climate Change Problem?

501 Climate change is a complex concept, requiring explanation.

The earth is surrounded by a thin film of gases forming the atmosphere. The composition of the atmosphere creates some of the essential conditions for life on earth.

Human activity over the last two hundred years has measurably changed the composition of the atmosphere through the emission of greenhouse gases.

Since pre-industrial times carbon dioxide concentration in the atmosphere has increased by about 28%, methane by 145%, and nitrous oxide by 13%. These are the three main greenhouse gases.

Greenhouse gases have the potential to increase the Earth's average temperature by trapping some of the heat the Earth radiates back to space.

The greater the concentration of greenhouse gases in the atmosphere the greater the potential for a warmer planet and changes to the climate.²⁷

502 New Zealand, with about 0.07% of the world's population, contributes at present between 0.15% and 0.3% of the world total of human-induced greenhouse gas emissions. In comparison the USA, for example, with about 4.5% of the world's population, contributes about 22%.

503 In 1998, almost 60% of New Zealand's total greenhouse gas emissions were from the agricultural sector, with energy (including transport) coming next at about 30%. The remainder of emissions come from the waste, industrial and other sectors.

504 Some greenhouse gases are removed from the atmosphere by chemical processes, and others can be converted by the carbon cycle into biomass. Forests and all vegetation play an important role in reducing greenhouse gases in the atmosphere, because trees and other plants act as carbon "sinks", absorbing carbon dioxide from the air. When a forest increases in size it absorbs carbon dioxide as part of the process of increasing its biomass.

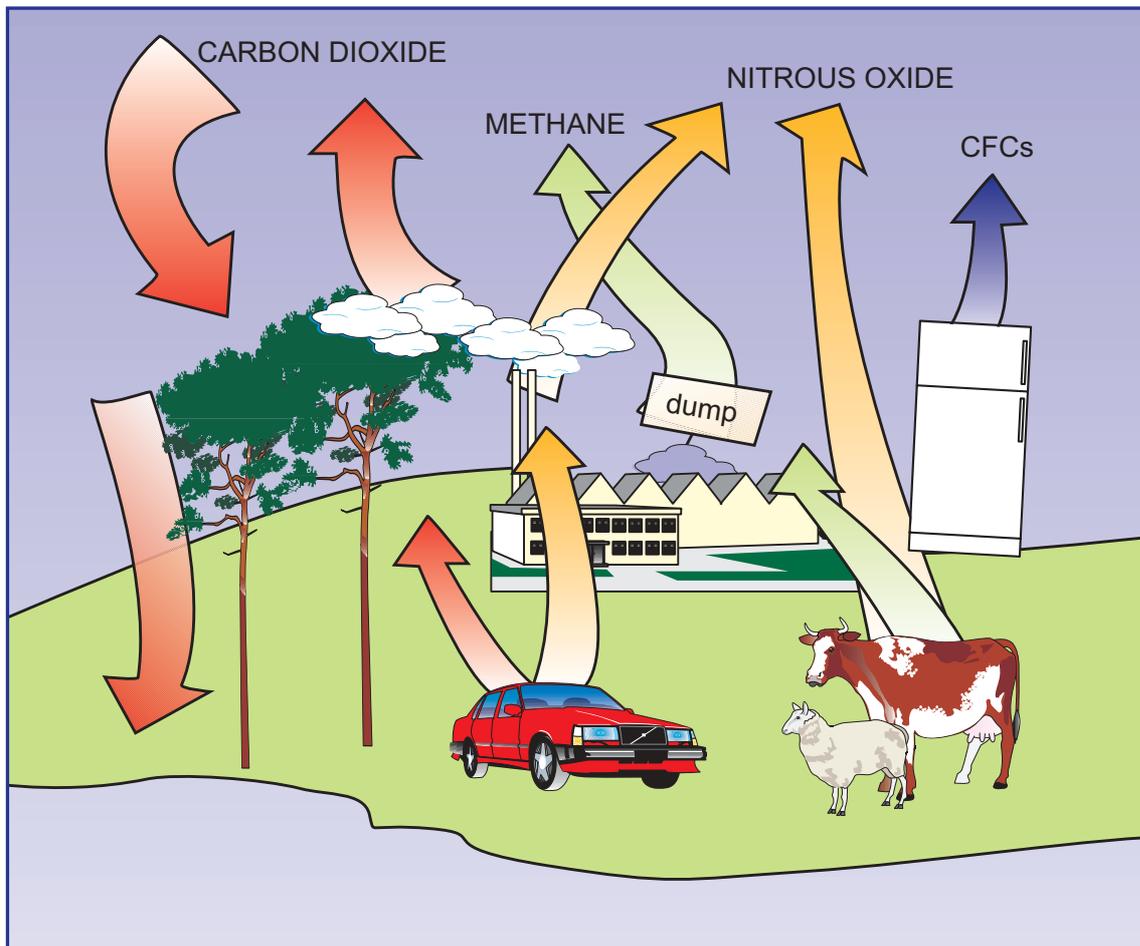
505 However, greenhouse gases are now accumulating in the world's atmosphere faster than these natural processes can remove them. Greenhouse gases are the products of processes that are considered central to contemporary society. Reductions in greenhouse gas emissions therefore imply fundamental economic, societal, and lifestyle changes that may be costly and difficult to implement.

²⁷ *Climate Change The New Zealand Response II, New Zealand's Second National Communication under the Framework Convention on Climate Change, June 1997, Ministry for the Environment, page 18.*

THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

506 Trends in world development are towards still further increases in greenhouse gas emissions as a result of the cycle shown in Figure 12 below. Because any reversal in this trend directly touches people's lives, commitments to reduce the emissions are a challenge on a world scale.

Figure 12
The Greenhouse Gases Cycle



507 The 'climate change problem' is that potentially serious changes to the earth's climate are expected to result from these atmospheric changes, including more high-temperature events, floods, and droughts. Human health, terrestrial and aquatic ecosystems, agriculture, forestry, fisheries, and water resources – which are all vital to human development and wellbeing – are sensitive to changes in climate. Low-lying small island states of the South Pacific are particularly vulnerable to sea level rises due to climate change.



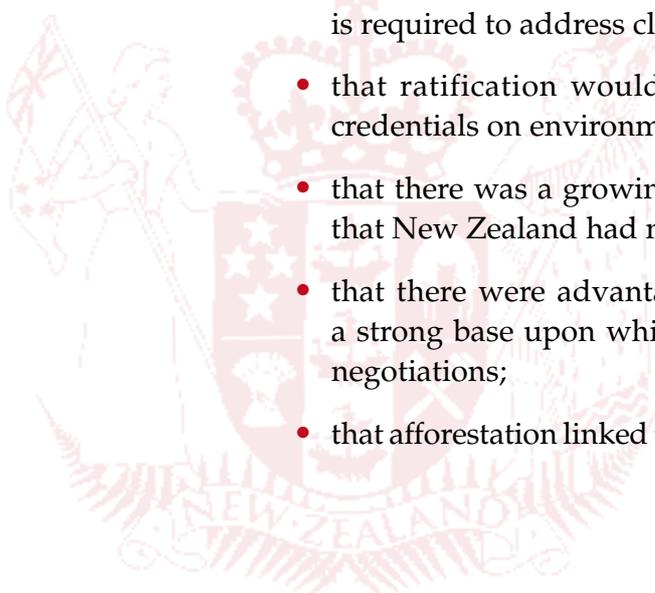
THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

What Is the Framework Convention on Climate Change?

- 508 The FCCC was one of two important agreements entered into at the United Nations Conference on Environment and Development (the “Earth Summit”) held in Rio de Janeiro, Brazil, in 1992. New Zealand called for effective international action to address the problem of climate change. It participated in meetings of the Intergovernmental Negotiating Committee that worked towards negotiating the text of the FCCC, and remains active in negotiations to finalise the rules.
- 509 New Zealand signed the FCCC at the Conference and ratified it on 16 September 1993. The FCCC came into effect in New Zealand on 12 March 1994.
- 510 The FCCC aims to stabilise greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous human-induced interference with the climate system.

Ratification of the FCCC by New Zealand

- 511 In 1993 the Minister of Foreign Affairs and Trade – when recommending ratification of the FCCC to the Cabinet – expressed concern at the seriousness of the problem of climate change. The Minister gave the following reasons for proceeding with ratification:
- that New Zealand’s economic interests were likely to suffer if climate change was unchecked, both directly and through the impacts on our Pacific Island neighbours because of large rises in sea levels;
 - that ratification reflected New Zealand’s acceptance that global action is required to address climate change;
 - that ratification would maintain New Zealand’s good international credentials on environment issues;
 - that there was a growing domestic concern from environmental groups that New Zealand had not yet ratified the FCCC;
 - that there were advantages in ratifying sooner rather later, to provide a strong base upon which to pursue New Zealand’s interests in further negotiations;
 - that afforestation linked to the FCCC offered substantial economic benefits;





THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

- that there was scope for New Zealand businesses to secure opportunities related to climate change; and
- that not ratifying would adversely affect international relations and risk isolation from other developed countries, New Zealand's South Pacific friends, and most other developing countries.

512 New Zealand has signed, though not yet ratified, the Kyoto Protocol (see paragraphs 518-524 below) for similar reasons. However, in 1997 the Government stressed the view that New Zealand wished to do its share of the work necessary to address the global problem of climate change.

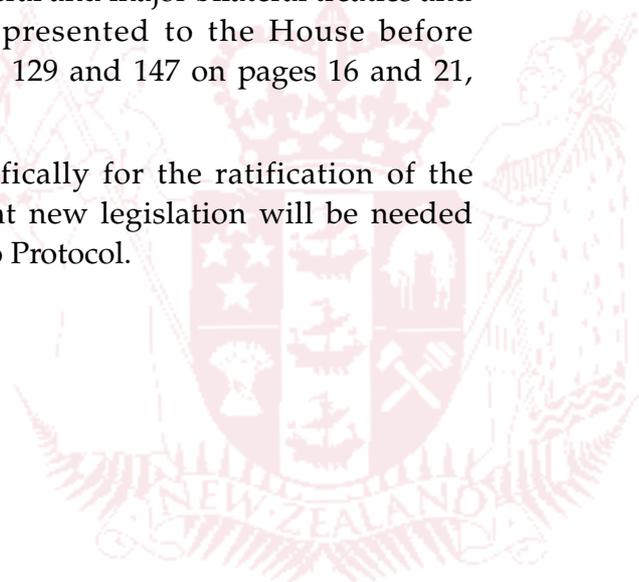
513 The Cabinet paper recommending ratification of the FCCC did not explicitly consider the costs of implementing the Convention in New Zealand. The costs are expected to be substantial and wide-ranging – for example, involving cost increases for fuel, and more energy efficient building, waste disposal, electricity generation and industry processes.

514 During the negotiation of the FCCC, Parliament was not informed of negotiating positions and progress, and Parliament did not consider the FCCC before the Government ratified it in 1993. The process followed was consistent with established practice at the time.

515 There was some consultation within and outside the Government. For example, Cabinet and supporting papers were minuted to Ministers and their departments – covering Foreign Affairs, State Services, Finance, Commerce, Forestry, Agriculture, Fisheries, Maori Affairs, Science, Crown Research Institutes, Labour, Environment, Transport, Conservation, and Energy. The Ministry of Foreign Affairs and Trade consulted some non-governmental organisations and industry to review progress on negotiations for the FCCC before the “Earth Summit” in June 1992.

516 Since the FCCC was ratified, all multilateral and major bilateral treaties and amendments to them must now be presented to the House before acceptance or approval (see paragraphs 129 and 147 on pages 16 and 21, respectively).

517 No new legislation was needed specifically for the ratification of the FCCC. However, officials consider that new legislation will be needed before New Zealand can ratify the Kyoto Protocol.



What Is the Kyoto Protocol?

- 518 The international community subsequently concluded that the FCCC's commitments were not strong enough. The Parties to the FCCC therefore negotiated the Kyoto Protocol, which sets out legally binding commitments for countries listed in Annex 1 of the FCCC.
- 519 The Kyoto Protocol was agreed in December 1997, and sets out legally binding greenhouse gas emission targets for developed countries, including New Zealand, for the period 2008-2012 (known as "the first commitment period").
- 520 New Zealand participated in the international meetings to develop the text of the Kyoto Protocol, and remains active in negotiations to finalise the rules by which it will operate. New Zealand has signed, but not yet ratified, the Protocol. No country with emission targets has ratified the Protocol at this stage.
- 521 By signing the Kyoto Protocol, New Zealand indicated its intention to proceed to the ratification step, subject to resolution of the issues still to be negotiated.
- 522 Assuming New Zealand ratifies the Kyoto Protocol and it comes into force, New Zealand will be required to stabilise its greenhouse gas emissions at 1990 levels on average over the period 2008-2012.
- 523 The Kyoto Protocol also provides for countries to use carbon sinks (such as forests) and international emissions trading (that is, purchase of surplus emission reduction credits from other countries) to help meet their targets. In New Zealand, the term carbon sinks is generally applied to planted forests that remove carbon dioxide from the atmosphere and store it.
- 524 Key, contentious, aspects of the Kyoto Protocol have still to be negotiated and agreed. How carbon sinks will be counted is a key outstanding matter that is of particular interest to New Zealand. And the details of the Protocol's compliance regime, and of how international emissions trading will operate, have not yet been established. Rules and guidelines are currently being negotiated, and will require satisfactory resolution before countries will feel able to ratify the Protocol.

Developing Plans for Meeting the Kyoto Protocol

- 525 There are four current facts that are important to understand the present position on the Kyoto Protocol:
- the Protocol is not yet in force;
 - if the Protocol is ratified by sufficient countries to bring it into force, the entire international economic structure is likely to change as a result;
 - the operation of the Protocol is likely to entail complex measures for international trading in greenhouse gas emissions and carbon sinks that have not yet been agreed; and
 - there is limited understanding of the Protocol's implications among businesses and the general public in most potential signatory countries.
- 526 The enormous changes that political leaders may soon be signing up to means that the need for clear public information is urgent.
- 527 If New Zealand is to meet its target under the Kyoto Protocol for the first commitment period (2008-2012) it will need to reduce its general level of emissions by an estimated 34 million tonnes (carbon dioxide equivalent), or take responsibility by trading sinks to compensate for those emissions. This estimate comprises 50 million tonnes of emissions, less an expected 16 million tonnes credit from non-carbon dioxide emissions that have declined since 1990 (for example, methane from livestock).
- 528 The Kyoto Protocol will provide scope for international emissions trading between countries, but the rules of trading have not yet been agreed. The trading is, however, likely to include the “credits” available from increases since 1990 in carbon sinks.
- 529 Changes in forestry since 1990 have substantially increased New Zealand's potential future carbon sinks. The value of New Zealand's forest sinks is substantial – it is estimated to comprise an additional assigned amount of over 100 million tonnes credit (carbon dioxide equivalent). It is expected that these assigned amounts will be tradable on the international market.
- 530 According to the Ministry for the Environment, the money value (which is a private benefit for the forest owners) of New Zealand's tradable sinks under the Kyoto Protocol may fall between \$1,000 million and \$3,000 million (including both public and private land holdings) for the first commitment period.
- 



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

- 531 Though the details of international emissions trading are yet to be determined, modelling suggests that trading may substantially reduce costs to New Zealand of meeting its targets.
- 532 In preparing for ratification of the Kyoto Protocol, governments will need to develop domestic policy measures for emissions trading. Only one country (Denmark) has so far introduced a domestic emissions trading regime (for electricity generators). The New Zealand Government has recently begun to consider the options for developing domestic emissions trading.
- 533 This early work also covers other important elements of the Kyoto Protocol including:
- a timeline for key milestones up to 1 January 2008, the start of the first commitment period;
 - further work required on climate change science, impacts, and monitoring;
 - further strengthening of energy efficiency measures;
 - emission abatement measures in the transport sector;
 - pursuit of the further opportunities for emission reductions available in the agricultural sector (for example, through design of new technologies); and
 - a communication strategy to help deliver consistent key messages and raise the general level of understanding of climate change.
- 534 The Government has signalled its intention to ratify the Kyoto Protocol by mid-2002. This means either:
- reducing emissions of greenhouse gases to 1990 levels on average over the period 2008-2012; or
 - taking responsibility for any excess above the 1990 levels – for example, through international emissions trading or trading in sinks.
- 535 New Zealand's ability to meet the mid-2002 target is likely to be boosted by recent increases in national carbon sinks, with forestry land estimated to have risen from 1.17 million to 1.73 million hectares since 1990.
- 536 The Government has promoted a number of measures to help prepare to meet the Kyoto Protocol commitment. For example, in May 2000 the Energy Efficiency and Conservation Act established the Energy Efficiency and Conservation Authority. One of the first tasks of the Authority is to develop a national energy efficiency strategy by April 2001.



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

537 In January 1999, as part of its emerging strategy the Government sent its *Climate Change Domestic Policy Options Statement*²⁸ for consultation to a wide range of people and organisations. The Government is currently developing a communication strategy on climate change to improve the quantity and quality of debate on the issue. For example, the Government recently agreed to early and unrestricted release of Cabinet papers on climate change.

The FCCC and Kyoto Protocol Obligations and the Agencies Responsible

The FCCC Obligations

538 The specific obligations under FCCC are to:

- adopt national policies to mitigate climate change through limiting human-induced emissions of greenhouse gases and protecting and enhancing greenhouse gas sinks and reservoirs;
- report detailed information on greenhouse gas inventories, national actions, and projected human-induced greenhouse gas emissions and removal by sinks;
- take climate change considerations into account (to the extent feasible) in relevant social, economic and environmental policies and actions;
- promote and cooperate on relevant scientific and technological research and exchange information, including technology transfer to developing countries;
- provide new and additional financial resources to meet the agreed full costs incurred by developing countries in complying with their obligations under FCCC; and
- promote and cooperate on education, training, and public awareness related to climate change, and encourage the widest participation in the process.²⁹

28 Published by the Ministry for the Environment, ISBN 0 478 09052 8.

29 *The State of New Zealand's Environment*, Ministry for the Environment, 1997.



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

- 539 The FCCC sets no binding targets or timetables for reducing net emissions of greenhouse gases. However, New Zealand, along with other developed countries, aimed at lowering emissions of greenhouse gases caused by people's activities to 1990 levels by the year 2000.

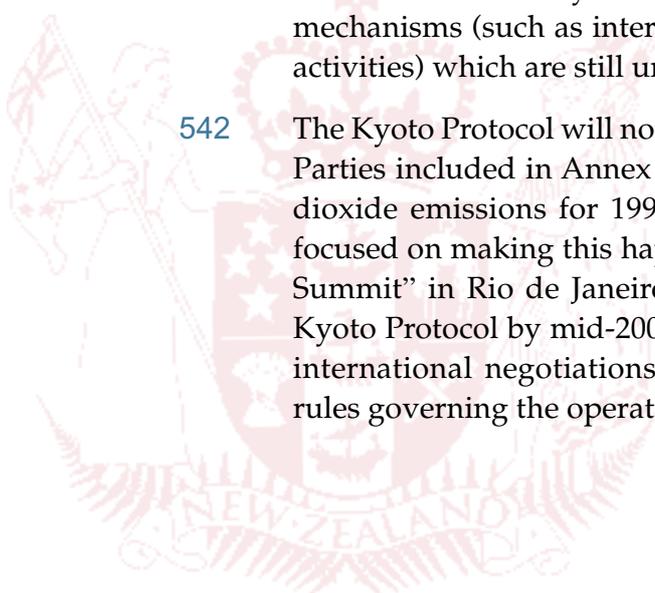
The Kyoto Protocol Obligations

- 540 The Kyoto Protocol provides for binding controls on greenhouse gas emissions. For industrialised countries – which have been chiefly responsible for increases in greenhouse gases since the mid-1800s – the Protocol establishes obligations to:

- provide data to establish the level of carbon stocks at 1990 and enable an estimate of subsequent changes to be made;
- report the country's greenhouse gas emissions by sources and removals by sinks;
- reduce combined emissions of the six main greenhouse gases in aggregate by at least 5% below 1990 levels, on average, over the first commitment period (2008-2012), or take other steps, such as trading sinks, to compensate for emissions in excess of the 1990 levels (New Zealand's country target is to reduce emissions to the 1990 levels on average over the first commitment period); and
- by 2005, show demonstrable progress towards achieving this commitment.

- 541 Where Parties to the Kyoto Protocol with commitments to reduce emissions are unable to do so, the Protocol provides a degree of flexibility in that countries may be allowed to meet part of their obligations through mechanisms (such as international trading of emissions and other possible activities) which are still under active negotiation.

- 542 The Kyoto Protocol will not come into force until 55 countries, incorporating Parties included in Annex 1 accounting for at least 55% of the total carbon dioxide emissions for 1990, have ratified it. A lot of attention has been focused on making this happen in 2002, the tenth anniversary of the "Earth Summit" in Rio de Janeiro. Whether or not the Government ratifies the Kyoto Protocol by mid-2002 (see paragraph 534) depends on the success of international negotiations during the remained on 2001 to complete the rules governing the operation of the Protocol.



Agencies and Responsibilities

- 543 The Ministry for the Environment coordinates climate change policy development. A steering committee of officials from the following government departments provides advice on the development of domestic and international climate change policy:
- Department of the Prime Minister and Cabinet
 - Ministry for the Environment
 - The Treasury
 - Ministry of Foreign Affairs and Trade
 - Ministry of Economic Development
 - Ministry of Agriculture and Forestry
 - Ministry of Transport
 - Ministry of Research, Science and Technology
 - Ministry of Maori Development.
- 544 The four key responsible government departments are the Ministry for the Environment, the Ministry of Foreign Affairs and Trade, the Ministry of Economic Development, and the Ministry of Agriculture and Forestry. Their respective roles and main activities under FCCC are set out in paragraphs 545-552 below.

Ministry for the Environment

- 545 The Ministry for the Environment:
- advises the Government on the health of the environment, and on policies and their impacts on the environment; and
 - works with others to achieve effective environmental management.
- 546 The Ministry's main activities under FCCC are:
- coordinating the interdepartmental climate change policy and programme;
 - taking a leading role in international negotiations on climate change; and
 - collating information on New Zealand's greenhouse gas emissions and sinks, and providing reports to the FCCC Secretariat.



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

Ministry of Foreign Affairs and Trade

547 The Ministry of Foreign Affairs and Trade:

- strengthens economic linkages with international markets and other countries;
- maintains constructive involvement in the international community; and
- promotes New Zealand's overall security.

548 The Ministry's main activities under FCCC are:

- coordinating participation, and leading negotiations, in international forums on climate change;
- coordinating papers to the Cabinet for approval of negotiating positions; and
- gathering and analysing information on the positions taken by other countries in negotiations.

Ministry of Economic Development

549 The Ministry of Economic Development:

- fosters business and lifts the New Zealand economy;
- leads the production and coordination of policy advice on economic, regional, and industrial development;
- advises the Government on the operation and regulation of some markets and industries, including energy; and
- provides operating functions in energy, Crown minerals, communications, and others.

550 The Ministry's main activities under FCCC are:

- providing advice to the Climate Change Steering Committee, Ministers, and others on matters such as –
 - energy and resource markets;
 - the impact of environmental and conservation policies on business; and
 - the use of economic instruments to achieve environmental outcomes; and

- developing an international trading approach to meeting climate change obligations under the Kyoto Protocol.

Ministry of Agriculture and Forestry

551 The Ministry of Agriculture and Forestry:

- provides policy advice on the trading environment and sustainable resource use; and
- provides policy advice and administers the regulation of product safety, biosecurity, and related matters.

552 The Ministry's main activities under FCCC are:

- conducting research on New Zealand's climate change position in regard to agriculture and forestry; and
- supporting New Zealand's climate change position on agriculture and forestry at international climate change meetings.

553 The Minister of Research, Science and Technology sets the broad priorities for research and development on climate change. Underpinning this research and the monitoring undertaken by the Ministry for the Environment, the following government departments collect information on greenhouse gas emissions and carbon sinks:

- Ministry of Economic Development, for emissions of the industry and transport sectors;
- Ministry of Agriculture and Forestry, for forest sinks and agricultural emissions; and
- Ministry for the Environment, for emissions from solid waste.

554 Local authorities have no specific obligations in relation to climate change, even though many of their activities (such as waste disposal and granting resource consents) affect levels of greenhouse gases. However, there is a more general requirement in the Resource Management Act 1991 for Regional Councils to prepare a Regional Policy Statement that takes account of the control of discharges of contaminants into the air.

555 We found that members of the Climate Change Steering Committee were dissatisfied with the Committee's progress to date. There were tensions between government departments with markedly different perspectives that, if not reconciled, will continue to cause slow progress.



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

- 556 It is unsurprising that the consequences of climate change and the equally far-reaching potential solutions can lead to lack of agreement between government departments with contrasting roles. Officials of individual departments are unlikely to resolve these differences without the lead that an effective “whole-of-government” approach would provide.
- 557 An effective whole-of-government approach requires more than regular meetings of the group of departments. It also needs acceptance by all parties on:
- departmental roles, mandates, contributions and accountabilities in regard to the project, and
 - project objectives, decision principles and criteria, timetables, processes, resources, and ways to resolve differences.
- 558 We consider that such a whole-of-government approach is a prerequisite to addressing a complex and wide-ranging issue like climate change.
- 559 The decision to ratify the Kyoto Protocol in mid-2002 provides an impetus for action, since the Protocol will involve specific targeted commitments. We understand that the measures required to prepare for ratification are resulting in greater collaboration between departments.

Is New Zealand Meeting its Obligations?

- 560 **New Zealand is meeting its obligations under FCCC except the first and most important obligation.**

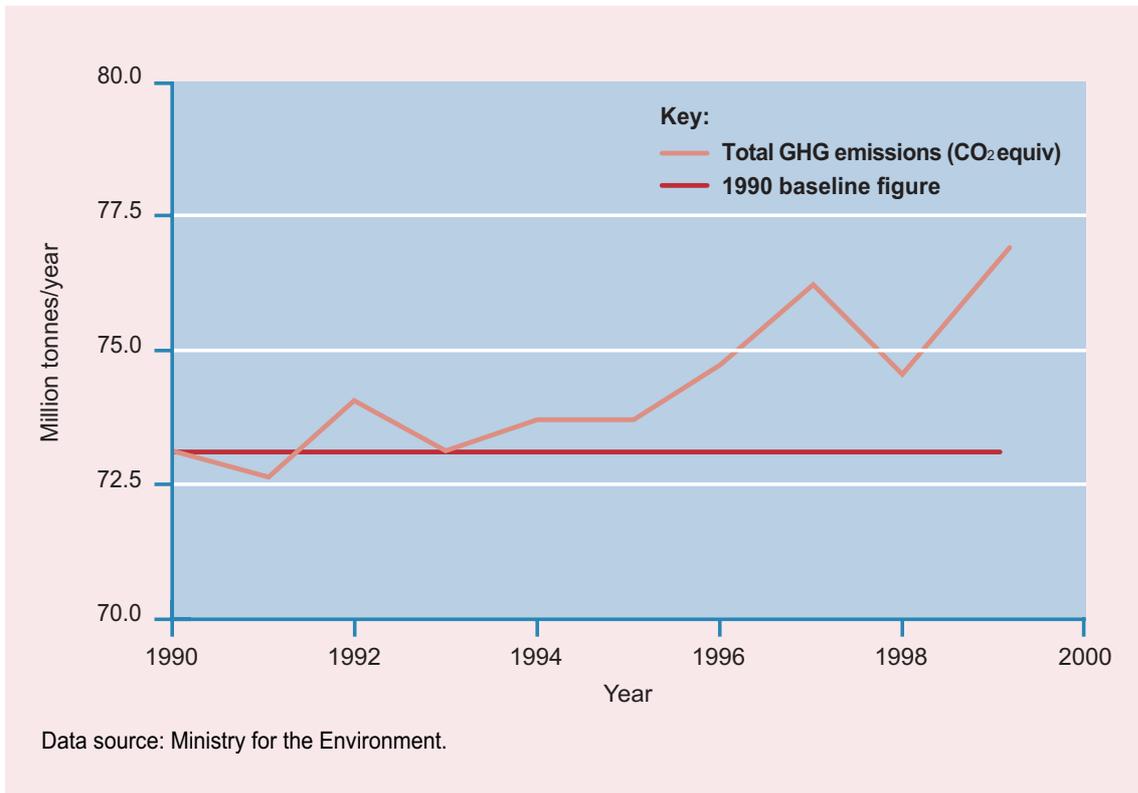
Adopting National Policies to Mitigate Climate Change

- 561 The commitment to adopt national policies to mitigate climate change and meet the aim to reduce greenhouse gas levels to 1990 levels by the year 2000 has not been met.
- 562 Provisional data illustrates that gross carbon dioxide emissions have indeed increased by 19.2% in New Zealand since 1990,³⁰ and for total greenhouse gases emissions the increase has been about 4.8%. The trend in total greenhouse gas emissions is shown in Figure 13 on the next page.

³⁰ Address by the Prime Minister to Redesigning Resources Conference, “Building a Sustainable Future for New Zealand”, 26 June 2000, page 5.

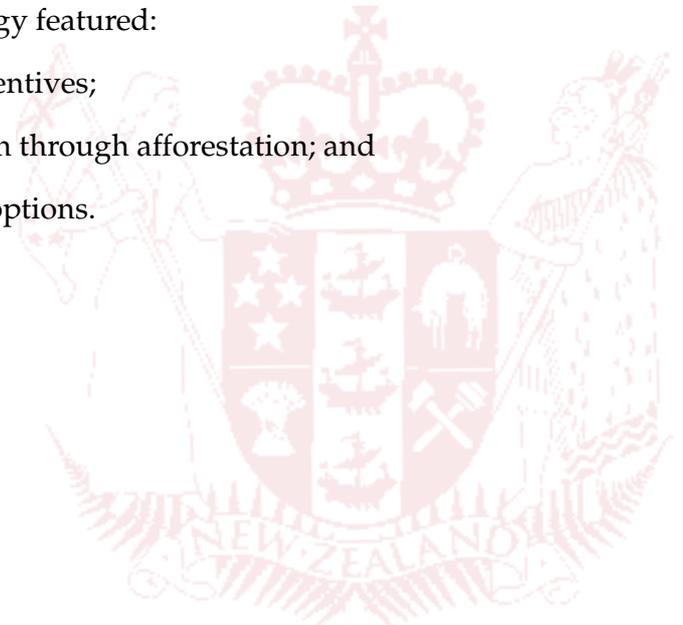
THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

Figure 13
New Zealand's Total Greenhouse Gas Emissions 1990-1999
(carbon dioxide equivalent)



563 In June 1993 the Government announced an interim strategy to respond to climate change with the intention of developing a comprehensive long-term strategy. The interim strategy featured:

- energy efficiency measures and incentives;
- increased carbon dioxide absorption through afforestation; and
- investigation of renewable energy options.





THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

564 The interim strategy was translated into measures announced a year later to help reduce greenhouse gases, although they have not yet proved effective. The measures included:

- Voluntary agreements with industry to promote improved energy efficiency and conservation.

The voluntary agreements expired in 2000, and were uncertain in their energy efficiency effects but mostly “worth doing anyway” due to gains in management awareness.³¹

- Additional funds (\$8.4 million over three years) to enable the Energy Efficiency and Conservation Authority to pursue its Energy Efficiency Strategy, including provisions such as minimum energy performance standards for electrical appliances and changes to the Building Code.

The Parliamentary Commissioner for the Environment later said³² that New Zealand had made a good start with the establishment of the Energy Efficiency and Conservation Authority, but the decline in funding and support for the Authority since 1996 had eroded many of the gains.

The revision of the energy efficiency provisions (clause H1) of the Building Code was finally implemented with the Building Amendment Regulations 2000 that were effective from 29 December 2000. The Government has now also committed to regulate and implement minimum energy performance standards (MEPS) for fluorescent lamps and ballasts, and electric hot water cylinders as soon as possible, probably by the end of 2001, and at the same time make energy labelling mandatory for selected domestic appliances. MEPS may also be introduced for further product classes in 2001/2002.

- Deregulation of the energy sector, establishing a more competitive wholesale electricity market.

The electricity sector reforms are likely to actually increase emissions in the short term and the outlook over the long term is uncertain.³³

31 *Domestic Climate Change Policy: A Presentation to the Cabinet Economic Committee*, 8 September 1999, Minister for the Environment.

32 *Getting more from less – A review of progress on energy efficiency and renewable energy initiatives in New Zealand*, February 2000, Parliamentary Commissioner for the Environment.

33 See footnote 29 on page 91.



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

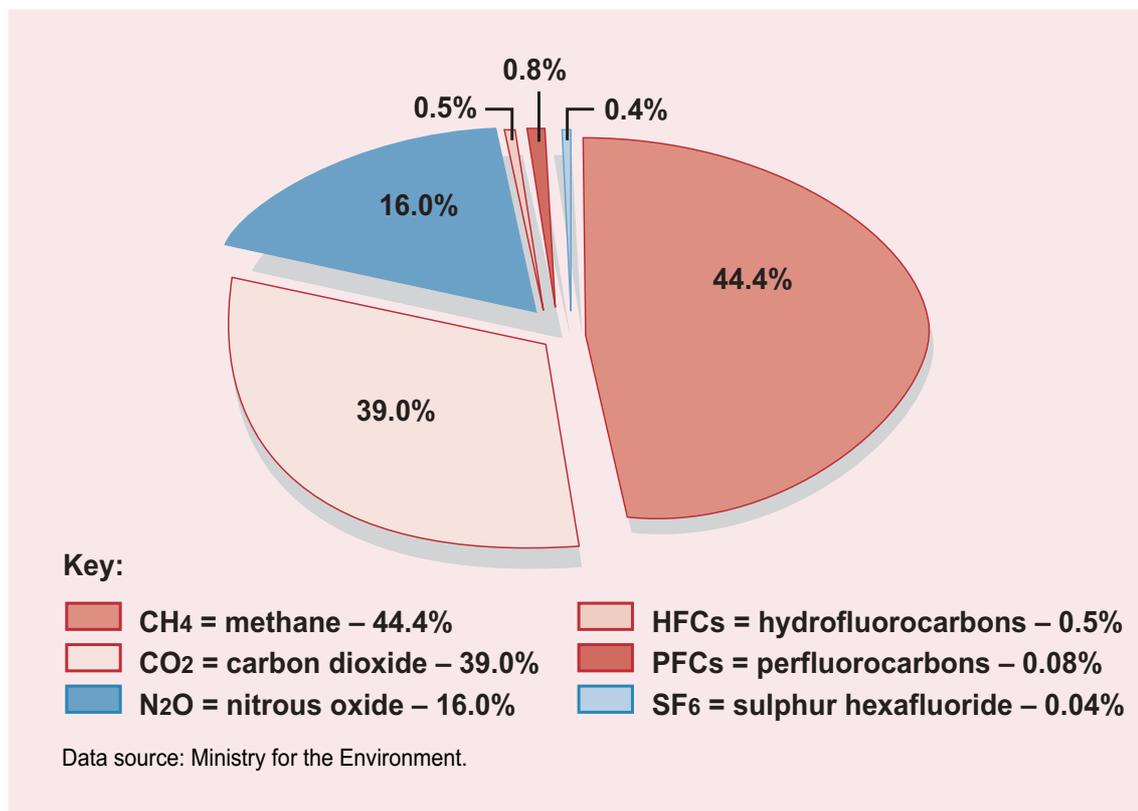
- Provision to introduce a low carbon charge if, by mid-1997, other measures were not on track to achieve the carbon dioxide reduction target.

In March 1997 the Government deferred a decision on the carbon charge.

- 565 In agriculture, some policies and developments not directly linked to climate change have reduced greenhouse gas emissions. For example, removing agricultural subsidies in the late 1980s decreased livestock numbers with consequent reductions in methane emissions from livestock and nitrous oxide emissions from soils.
- 566 Use of land retired from livestock production for forest planting has had the double effect of reducing methane emissions from livestock and creating new greenhouse gas sinks.
- 567 Expanding New Zealand's planted forests increased absorption of carbon by increasing carbon sinks. Tax changes (unconnected to climate change policy), and increases in world prices for forestry commodities, provided increased incentives for planting in the early 1990s. Nevertheless, whether consciously or unconsciously created to help tackle climate change, the impact is substantial – in the period 1990 to 1999, forestry land is estimated to have increased from 1.17 million hectares to 1.73 million hectares.
- 568 In recent years, another direct policy response to climate change has been investment in scientific research into agricultural greenhouse gas emissions. Research has been funded directed at reducing methane emissions from livestock – for example, by increasing feed conversion efficiency and by improving livestock productivity.
- 569 In May 2000, Parliament enacted the Energy Efficiency and Conservation Act 2000. Among other things, the Act requires development of a national energy efficiency and conservation strategy – the draft of which the Minister of Energy launched on 29 March 2001.³⁴ The draft strategy proposes two targets for achievements by 2012:
- a 20% improvement in energy efficiency; and
 - a defined increase (the amount to be decided after taking advice and submissions) in renewable energy supply.

34 The final version of the strategy must be issued no later than 1 October 2001, and will continue in force for five years.

Figure 14
New Zealand's Greenhouse Gas Emissions in 1998



Reporting Greenhouse Gas Inventories

570 New Zealand is meeting the FCCC requirement to report annually on its greenhouse gas inventory, although it is recognised that there are still uncertainties in some parts of the inventory. New Zealand established an inventory of its 1990 emissions and sinks for the most significant greenhouse gases and updates the inventory yearly. In addition, research has been funded designed to improve information on sources of greenhouse gas emissions and removals through sinks.

571 In addition to the requirement to supply an annual inventory, there is also a requirement to report on the inventory and climate change commitments in a report called a National Communication. The contents of the National Communication are specified and the report is reviewed in depth by an international team of experts. New Zealand has so far completed two National Communications – dated September 1994 and June 1997 – and the review team praised the second of the two.

Taking Climate Change Into Account in Social, Economic, and Environmental Policies

- 572 The Resource Management Act 1991 requires Regional Councils to prepare a Regional Policy Statement that takes account of the control of discharges of contaminants into the air. Though not framed specifically in response to the FCCC, the Act is seen as contributing to meeting climate change commitments by providing for councils to place conditions on air discharge consents involving significant carbon dioxide emissions.
- 573 For example, Wellington Regional Council's Policy Statement addresses climate change by:
- identifying a coastal hazard zone at risk from sea level rises due to climate change;
 - specifying energy efficiency, effectiveness, and management policies;
 - promoting the use of “renewables” and recovery of landfill gases;
 - promoting transport energy use and efficiency; and
 - establishing emission and discharge standards.
- 574 The existence of such policy statements should also have an impact on territorial local authorities, since they are required under the Resource Management Act to have regard to the local Regional Policy Statement.
- 575 A long-term national policy for co-ordinating and integrating central and local government actions on climate change does not yet exist. However, the Resource Management Act provides a potential framework to ensure that climate change is taken into account in social, economic, and environmental policies throughout all levels of government.

Promoting Climate Change Research and Information Exchange

- 576 New Zealand fully meets this obligation. In 1997-98 public expenditure on climate change research was \$17.1 million, focusing on the responses, processes and effects of climate change. Some examination has been made of improvements in methods for determining the inventory of methane from livestock and for nitrous oxide from agricultural soils. Nine Crown Research Institutes undertake most of the research.



THE FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE KYOTO PROTOCOL

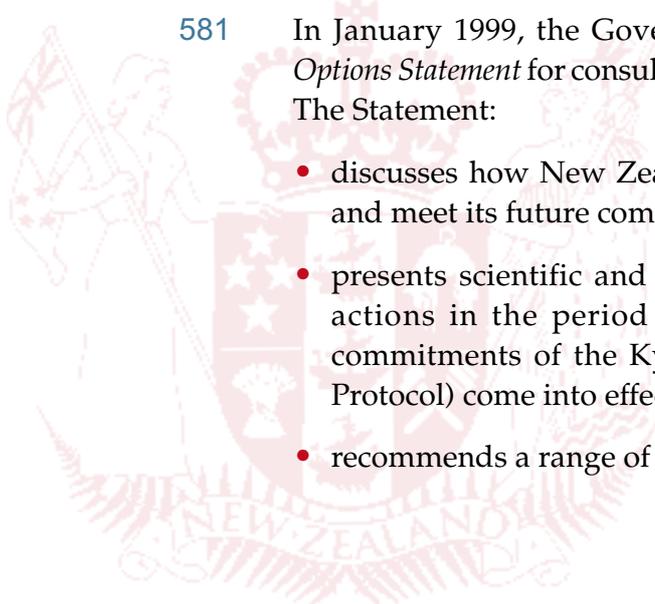
- 577 New Zealand also participates in international research programmes such as the Geosphere-Biosphere Programme and the World Climate Research Programme.

Providing money to Help Developing Countries to Comply With the FCCC

- 578 New Zealand contributed \$10.4 million to the 1994-1997 replenishment of the Global Environment Facility for developing countries, which was almost double the assessed contribution.
- 579 New Zealand also funds climate change activities in countries in the Pacific region. The money is included in funding for environmental activities that mainly comprise capacity building, training, forestry and conservation projects, monitoring sea level rises, and promoting the use of alternatives to petrol. A total of about \$2 million was provided in each of the years 1998, 1999, and 2000.

Promoting Climate Change Education, Training, and Public Awareness

- 580 The obligation to promote education, training, and public awareness in climate change is being met through regular meetings involving government department officials and people from business and other non-government organisations. These meetings have debated issues around climate change, assisted by technical papers (on, for example, the results of research and developments in the science of climate change).
- 581 In January 1999, the Government sent its *Climate Change Domestic Policy Options Statement* for consultation to a wide range of people and organisations. The Statement:
- discusses how New Zealand might address the risks of climate change and meet its future commitments;
 - presents scientific and political information and options for domestic actions in the period before 2008-2012, when the legally binding commitments of the Kyoto Protocol will (if New Zealand ratifies the Protocol) come into effect; and
 - recommends a range of actions during that first commitment period.



Reporting to Parliament

- 582 The four key climate change agencies (see paragraph 544) each refer to their individual intentions and contributions towards meeting the climate change obligations and report on them in their *Estimates of Appropriations*, forecast reports and annual reports.
- 583 Climate change is a complex subject. In our view it is not reasonable to expect Parliament or the public to pick up the various strands of policy and activity relating to climate change solely from departmental publications, each written from the particular department's perspective. Such disparate reporting makes it difficult for Parliament to form an overall view about New Zealand's progress in meeting its climate change obligations.
- 584 We consider that Parliament would find it helpful to have a single report on climate change, jointly produced by the responsible agencies. The report would:
- provide a single source of information on agency performance;
 - explain how New Zealand is meeting its international obligations; and
 - inform Parliament by outlining new policy developments and issues.



Appendices

APPENDIX 1

Definition of Terms

An International Agreement Can Have a Variety of Names³⁵

Treaty is the generic term for an international agreement, but it is generally confined to major agreements of political importance – as in treaties of alliance.

Agreement is the most common title – as in agreements that regulate trade.

Convention is commonly used for multilateral treaties that are open to acceptance by a large number of states (or all states). A framework convention establishes its own institutional and decision-making framework for interpreting, developing, and implementing its provisions.

Protocol is commonly used for an agreement supplementary to a principal treaty.

Other names that may be used for an international agreement are *charter, constitution, declaration, covenant, instrument, accord*.

Signature, Ratification, Accession³⁶

Signature often represents no more than a concrete expression of an intention to ratify the treaty in the future (although it does imply the obligation to act in good faith).

Ratification is sometimes known as *acceptance* or *approval*. Ratification is the final acceptance of the treaty and may first require substantial changes in government policy or national law.

Treaties create binding obligations between signatory parties, and countries that have not signed the treaty may have the right to *accede* to the text and thereby become bound by it.

³⁵ *A New Zealand Guide to International Law and its Sources*, Report 34, Law Commission, May 1996, page 6.

³⁶ *Ibid*, page 10.

Implementation

Implementation is the step that a country takes to give effect within its borders to the obligations contained in an international agreement – either by introducing and actioning new legislation or by administrative means, or both – before ratifying or acceding to an agreement.

On-going Compliance

On-going compliance with an international agreement is the ongoing activity undertaken by a country to meet its obligations under that agreement.

Entry into Force

Entry into force of an international agreement occurs when a specified number of parties (countries) have ratified the agreement and agree to implement the agreement from that time onwards.



APPENDIX 2

The Stages of Making an International Treaty

- The treaty-making process involves three stages: negotiation, acceptance and implementation. Negotiation and acceptance are international actions. Under our constitutional system, it is the role of the Executive Government to negotiate and accept treaties. The Executive Government is also responsible for deciding whether and, if so, how to implement the treaty in New Zealand. However, as a basic constitutional principle, the Executive cannot change the law of New Zealand simply by entering into a treaty. If the treaty affects rights and duties under law, then the law must be brought into conformity with the treaty. So the treaty also becomes a concern of Parliament.
- Parliament is involved in the implementation of and ongoing compliance with a treaty where this requires the passage of domestic legislation and the allocation of public resources by appropriation.
- Before 1997, the Law Commission and others were concerned that the practice whereby the Government entered into treaties without significant parliamentary or public involvement was undemocratic, and there were calls for Parliament to have a greater role.
- In 1997 a Select Committee report³⁷ to the House recommended significant advancement in Parliament's role in the international treaty process. The recommendations were tested in Parliament for a year, and most of them have since been permanently implemented. In particular the changes allow Parliament to:
 - become informed about prospective treaties early;
 - receive information explaining the likely impact of the treaty; and
 - have an opportunity to debate issues of concern before the treaty is ratified, acceded to, accepted or approved by the Government.

³⁷ *Inquiry into Parliament's Role in the International Treaty Process*, Report of the Foreign Affairs, Defence and Trade Committee, parliamentary paper I.4A, 1997.

Outline of Process for Acceptance of Agreements

