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**"Coastal Governance:
Meeting the challenges of development pressure, ownership,
and climate change"**

Introduction

I was originally asked to give a paper on climate change and coastal governance. I have gone a little broader, and this paper that looks at some of the fundamental problems in New Zealand coastal governance that make it difficult to deal with a number of challenges, including the serious challenge from climate change.

I joined the Department of Conservation (DoC) in 1988 from the Water and Soil Division of the Ministry of Works and Development, and was there for the transition from the Harbours Act 1950 to the Resource Management Act 1991 (RMA), before working at local authority level with the Kapiti Coast District Council and then as an independent coastal management consultant. This paper identifies the fundamental problems in coastal governance that have become apparent over 20 years of practice; examines the evolution of the coastal governance regime to see how those problems arose; and then proposes some reforms that would enable New Zealand to meet coastal governance challenges into the future.

A quick comment on the focus and whakapapa of this paper

This paper will focus on the coastline, where all the different challenges facing coastal governance can be most clearly seen, and where problems with coastal hazards and exercising Crown ownership of the public foreshore and seabed are most apparent.

It draws on my 2004 review of the coastal hazard policies of the NZ Coastal Policy Statement 1994 (Jacobson, 2004) which was part of the independent review of the NZ Coastal Policy Statement 1994 for the Minister of Conservation by Dr Johanna Rosier (Rosier, 2004). Both reports were published by the Department of Conservation in 2004, and are on the DoC website.

It also draws on my 2008 submission to the Board of Inquiry on the Proposed NZ Coastal Policy Statement, which addressed the exercising of Crown ownership for the public foreshore and seabed.)

However, we cannot lose sight of the fact that there are inter-related physical and biological processes going on across the whole coastal environment and

beyond. And there are multiple conservation, cultural and social values to be taken account of and protected in the coastal environment.

Unless coastal governance embraces a holistic and integrated approach, it cannot succeed, and it will not meet the challenges that are imposed by human endeavours clashing with dynamic natural features and processes in the coastal environment.

Just as a specific example, the Ministry for the Environment (MfE) has just released in March 2009 the document “Preparing for Coastal Change – A guide for local government in New Zealand” (Ministry for the Environment 2009). This guide sets out key principles for managing coastal hazards, and one of the key principles is:

Importance of natural coastal margins: The dual role of natural coastal margins as the fundamental form of coastal defence and as an environmental, social and cultural resource must be recognized in the decision-making processes. Consequently, natural coastal margins should be secured and promoted.

The role of climate change in driving a need for coastal governance

This is not a talk about the details of climate change – I will leave that for others. I am simply coming from a position that human induced climate change is a reality: That sea level will rise and that a changing climate will in this and other ways change and increase coastal hazards substantially over time.

Even so, it is unhelpful to look at climate change in isolation of existing coastal hazard problems.

The reality is that climate change is currently (and will remain for a considerable time) largely an intensifier of existing coastal hazard problems.

Even with no significant climate change effects there are already serious problems with coastal hazards and lots of challenges for coastal governance. eg. erosion and seawalls (or seawall proposals) at:

175 Manly Street, Paraparaumu
Plimmerton Beach, Porirua, Wellington
Castlepoint, Wairarapa
Waihi Beach, Bay of Plenty
Wainui Beach, Gisborne
South Wairarapa coastline (Te Kopi, Ngawi, etc)

But coastal hazards and the challenges for coastal governance **are** going to increase over time as climate change really begins to bite.

That increasing hazard is, however, no guarantee of action. As anyone who has been involved in assessing and quantifying existing coastal hazards knows, the effects of climate change on coastal hazards are not going to be apparent as a steady progression. The signal will be lost in the noise for a while at least, and there is every indication, from Government actions on climate change to date, and from local council actions on coastal hazards to date, that there will be a strong tendency towards muddling along with the status quo, perhaps with a bit of fiddling around the edges.

One way of looking at it is that, with climate change, there is going to be no free lunch – there is a spectrum of action choices, and no opt out clause:

- If the world (including us) reduces greenhouse gases, then fewer areas in the coastal environment will be threatened by coastal hazards.
- If we don't reduce greenhouse gases, we could instead adapt and progressively retreat development from coastal hazard areas, as well as extending coastal buffer areas so that recreational and environmental values are not destroyed by 'coastal squeeze' (Jacobson, 2004). Unlike greenhouse gases, this is under New Zealand's control.
- If we don't reduce greenhouse gases or adapt by removing development from coastal hazard zones and buffer zones, then we will be left to clean up the mess – ie. meet the financial, social and environmental costs that coastal hazard events will cause through damage to protection works, to development itself, and to recreational and environmental values (through 'coastal squeeze').

So, even with a good coastal governance regime, there are going to be difficult decisions to make in New Zealand.

Meeting the challenges will be even more difficult if our coastal governance regime is dysfunctional. Unless New Zealand's coastal governance regime is healthy, we are kidding ourselves if we think we can encourage and guide wise development and redevelopment in the coastal environment.

However, the evidence is that our coastal governance is not healthy.

What are the signs that our coastal governance is not in a healthy state?

The primary instrument of coastal governance affecting our coastline and the whole or the coastal environment, the Resource Management Act 1991, has now been in force for 18 years. It is clear that the deep concerns over a flood of development on the coast, with its effects on natural character and increasing coastal hazard risk, recognised as a problem at least since the early 1970s, have not been adequately dealt with. Looking more closely at the component parts of the larger problem, some examples of problem indicators are:

Some indicators directly relevant to climate change:

- Development is still taking place even in areas that are already potentially threatened by coastal hazards, and District Plans and consent decisions are still not effectively controlling future development.

(eg. in 2009, the Proposed Tararua District Plan has no coastal hazard identification or hazard zones; no coastal environment management zone; no control on multiple dwellings on coastal properties.
eg. Kapiti Coast still has out-of-date hazard zones from 1978, and extra dwellings are still a permitted activity in coastal hazard zones – cf. Henry dwelling in 2003 - **see Case Study 3 below.**)
- In general, ‘giving effect to’ the NZCPS has been slow and is still patchy, especially in District Plans and District Council consent decisions.

(cf. Review of the NZCPS 1994 (Rosier 2004 and Jacobson 2004))
- Seawalls are still the first and often only response to coastal hazards countenanced by property owners under threat, and few seawalls are being refused consent.

(Taranaki Regional Council comment for the 2004 review of the NZCPS: “NZCPS Policy 3.4.6 has meant lots of interesting debate about seawalls, but no seawalls have been declined”.
Also: the Waihi Beach seawall in 2008,
the Castlepoint Stage Two seawall still being pursued in 2009)
- Many of the seawalls being built are being built out onto public beaches – burying often valuable and much used public beaches and foreshore.

(Again, advancing seaward in the face of existing erosion processes and impending climate change is the opposite of retreating away from coastal hazards and climate change effects. And this is despite the avowed object of the Foreshore and Seabed Act 2004 “to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders” and for the Crown “to protect the public foreshore and seabed on behalf of all the people of New Zealand”. But why would a property owner use their own property and affect their private amenity when public property can be used for free for private protection? See later bullet points.)
- In contrast, any attempt to undertake dune restoration on private property (or to provide compensatory public access where seawalls have buried the public beach) is definitely not countenanced by property owners under threat (or pushed by District Councils).

(ie. public property is fully available, but private property is totally unavailable - even where the benefit is entirely to private property owners
eg. Waihi Beach seawall 2008 & Castlepoint Stage Two seawall 2009)

- In general, the ongoing zero charge for occupation of the public foreshore and seabed provides a perverse incentive to locate built development in the coastal marine area or on reclamations of public foreshore and seabed.

(The zero rental encourages advancing seaward instead of seeking out alternative ways of meeting demand on land. And disadvantages those businesses that pay rentals on land. Such perverse incentives are factors that a market driven society and its developers do not ignore – and regulation cannot go it alone in a market driven society.)

- The perverse incentives from zero rentals are compounded by lack of an effective ownership consent and poor integration with other marine resources legislation.

(The absence of an effective ownership consent further tilts the playing field towards allowing development to proceed on the public foreshore and seabed, and also means that strategic allocation of this public land has not been achieved. This is evident with the poor progress towards allocating areas for aquaculture, not to mention the even slower progress towards the allocation of 10% of the coastal marine area for marine reserves.)

- Minister of Conservation final consent for RCAs has been revealed as a 'rubber stamp', and would be removed under the current RM Amendment Bill.

(cf. High Court decision on Whangamata Marina - it is not a healthy baby that is being thrown out with the bath water in the RM Streamline and Simplify Amendment Bill)

- There is patchy coordination of policies and rules across MHWS between District Councils and Regional Councils (and even between regional coastal plans and regional policy statements)

(in many places, an activity can switch from a non-complying activity to a permitted activity depending on where the MHWS boundary is deemed to be at that moment, eg Wainui Beach seawall in Gisborne, or the 175 Manly St seawall in Kapiti, or the Castlepoint seawall in the Wairarapa. Matching rules and policies is the least that should be done to achieve integration of process across the mobile and uncertain line of MHWS boundary, and to enable consistent assessment of development that may span the boundary.)

- There is patchy management of public lands along the coastline, confusion over the various types of public land along the coastline, and little progress towards networks of useable public access along the coastline.

(confusion was apparent during the foreshore and seabed debate over public access to, and use of, the 'beach' and the 'foreshore'. Many dry beaches are un-allocated Crown land, and private landowners often encroach onto such public land and even onto esplanade reserves. The mobile MHWS boundary also means that beach becomes foreshore, and that esplanade reserves can become foreshore and then dry beach or dune again – but the underlying status remains unchanged.

Three case studies can illustrate many of these points (as much as any particular case with its unique facts can illustrate a general issue):

Case Study 1:

The proposed Castlepoint Stage 2 seawall, Wairarapa

Application was made in 2007 by Masterton District Council for a rock revetment seawall at the Castlepoint village. The seawall was long enough to be deemed a restricted coastal activity. Stage 1 was to protect the road that gives access through the village and to the Castlepoint Reserve, one of only four Areas of Significant Conservation Value identified in the Wellington Regional Coastal Plan. Stage 2 was purely to protect around 10 baches/dwellings on the flattened dunes between the village and the Castlepoint Reserve. Those flattened dunes are the classic elevated lawn with ice plant hanging over a vertical escarpment, above concrete rubble washed by each high tide (except where one property owner has cut deeper into the dune and paved his/her entire dune with concrete pavers to maintain a view shaft to the bay from the bach set back near the road).

The Hearing Committee approved Stage 1 but refused consent to Stage 2. The refusal for Stage 2 was appealed to the Environment Court, and is still being pursued in 2009.

It has been clear throughout the consent process for Stage 2 that public property (the tide washed foreshore and escarpment) is seen by the applicant council and property owners as fully available for protection works, but private property is totally unavailable - even though the benefit is entirely to the private property owners, and even though the public land is adjacent to the very valuable Castlepoint Reserve.

Dune restoration is considered a viable protection option here by Jim Dahm, but it would have to extend onto the private property that is to be protected. The response, as stated in the AEE, is that works on the private land are not a practicable option because the owner's consent has not been granted, and

hence dune restoration cannot be the best practicable option sought by Policy 3.4.6 of the NZ Coastal Policy Statement.

In addition, even at this late stage (after already spending substantial public money pursuing Stage 2), Masterton District Council has not seen fit to come to any agreement with the property owners over what contribution they would have to make to the \$570,000 cost of the seawall. This is despite the fact that the seawall will have benefit only for the private property owners, and will have only adverse effects on the public land and public coastal values, which are considerable in this area beside Castlepoint Reserve with its wonderful natural character.

Case Study 2:

The Water's Edge subdivision, Paraparaumu, Kapiti Coast

When the last large block of coastal land in the Paraparaumu urban zone came up for sale in the late 1980s, Kapiti Coast District Council very admirably tried to buy the block, so that it could set aside a wide esplanade reserve (matching the substantial setback of the existing development on either side) before putting the remainder back on the market. Council was outbid and hence failed. Instead, Council used the \$91,000 reserve contribution from the subdivision to buy 9 extra metres to add to the 20 metre esplanade reserve it was able to take as of right.

Nevertheless, the new subdivision still protruded substantially seaward because of a long period of accretion in the area.

Compounding the seaward protrusion, all four beachfront property owners built their dwellings right up to the 3m rear yard limit (despite this being seaward of the no-build coastal hazard line – the subject of queries to the Kapiti council by the Parliamentary Commissioner for the Environment).

Within 10 years, an erosion episode converted the dry beach plus 20 metres of the 29 metre foredune esplanade reserve into foreshore, and threatened the dwellings with imminent collapse onto the beach/foreshore.

A 'temporary' seawall of large concrete blocks was constructed under a quickly granted 10 year coastal permit. The seawall was built far forward on the esplanade reserve and foreshore, and instead of dune restoration the residents could and did extend their lawns and private gardens onto the esplanade reserve behind the seawall.

When the coastal permit was due to expire, the coast had returned to a period of accretion, and owners and councils considered that only a land use permit was required for the now high-and-dry seawall.

So, there is now a permanent structure and reclamation, and the private owners have achieved, in practice, free and exclusive use of the publicly owned esplanade reserve that was also once foreshore. The gardens and lawns on the esplanade reserve appear entirely private in nature, and the hedges along each private property boundary between the houses preclude any public promenading on the esplanade reserve. There are no council signs identifying the boundaries of the public land or the existence of the esplanade reserve.

There was, of course, no thought of a rental for the occupation of the foreshore/esplanade reserve by the private seawall when it was built; and there is no thought of a rental for the private lawn and garden and seawall structure on the public esplanade reserve now.

Case Study 3:

The Henry second dwelling, Raumati Beach, Kapiti Coast

This is a case study to illustrate the danger of trying to control subdivision but still allowing multiple dwellings in or near hazard zones – an issue of importance with climate change looming.

B & K Henry v Kapiti Coast DC W24/2003 & W42/2003.

Mr Henry made an application to subdivide his Raumati beachfront property, which was substantially within the coastal hazard zone. When advised that he was very unlikely to be granted subdivision consent, Mr Henry withdrew his subdivision application.

He then proceeded to construct a second dwelling on the property, which was a permitted activity despite the coastal hazard zones (an oversight in the district plan that the Council did not deem important enough to act on). Having completed the second dwelling, Mr Henry then re-submitted his subdivision application. As expected by him, consent was refused by Council, and he took an appeal to the Environment Court.

The Environment Court granted the subdivision consent on the basis that the development and effects had already taken place and the drawing of boundary lines would create no new effects and make no real difference.

(In my view, the effects of subdivision are different, in that an owner of the larger property does not lose everything if forced to remove the seaward dwelling in the event that the risky investment has an unhappy ending. This is in contrast to the new owner of the seaward subdivided lot, who has nowhere to retreat to and will lose everything if forced out by coastal hazards. However, this nuanced risk-based approach to coastal hazard management is not yet enshrined in policy, and clearly did not occur to the Environment Court in the *Henry* case.)

(I cited this case at the May 2009 hearing into the Proposed Tararua District Plan. That newly proposed plan makes subdivision within 1km of the coast a discretionary activity, but any number of dwellings will remain a permitted activity along this coast which has no hazard zones...)

Other coastal regime indicators that are not so directly pertinent to climate change:

- Coastal rentals and occupation charges have failed, and deliver zero revenue.
 - (- both the original and the replacement regimes have proved unworkable.
 - Councils do not have rental revenue to improve management, or to provide access to less wealthy New Zealanders, eg in marinas
 - no revenue to proactively assist Maori in their kaitiakitanga role, or to share one of the benefits of ownership)

See below Case Study 4: Loss of revenue from zero rentals

- Coastal tendering has failed.
 - (the original regime at least was unworkable)
- The 'gold rush' on aquaculture sites, the moratorium, and the many failed amendments to try and create aquaculture opportunities on appropriate sites.
 - (Phase 2 of the proposed National Government RMA amendments is to try again)
- No requirement for occupiers of Crown owned reclamations to apply to have rights vested and pay rents
 - (there is simply no RMA requirement to apply for occupation rights. Occupiers have every right to squat on publicly owned prime seaside real estate)
- Panic enactment of the Foreshore and Seabed Act 2004 - and now a review of the Act
 - (uncertainty will continue, along with doubts when trying to exercise ownership)

Case Study 3: Loss of revenue from zero rentals

Mana Marina, Porirua

Perpetual licences were sold by the marina incorporation.

Sold at cost until new berths were all full:

\$32,000 for 12m berth up to 1999
(= \$41,200 in 2008 dollars)

Then the market operated:

↓
\$90,000 in 2008
(the same in 2009 after crash)

Therefore, for around 200 berths:

Supernormal profit and rental capture

= approx. \$58,000 x 200

= approx. \$11.6 million over 9 - 10 years

= \$1 million per year for Mana Marina alone

A rental that captured 10% of this:

\$500/yr for a 12m berth x 200 equiv. berths = approx. \$100,000/yr

= \$100,000/yr for one marina

**= significant revenue for coastal projects
and kaitiakitanga.**

(Including transporting the sand that gets deposited in Mana Marina from the Plimmerton coastline, back onto the depleted and eroding Plimmerton beaches.)

You may dispute some of these examples, but overall our current coastal regime is not coping well with the ongoing pressures from existing and new development on the coastline, exercising Crown (or Maori!) ownership, integrating management across jurisdictional boundaries, and responding to existing coastal hazards in a sustainable way.

This is not to suggest that coastal governance is easy. There are many particular characteristics of the coastal environment that make it difficult to get coastal governance functioning effectively. For completeness, the particular characteristics that make coastal governance difficult are set out before moving on to analyse what went wrong with past reforms.

The particular challenges for coastal governance

The special characteristics of the coast and coastal development include:

- Public ownership of almost all the coastal marine area
- Multiple uses of, and expectations for, the coastal marine area
- The ongoing perception of the coastline and coastal marine area as a frontier, a no-man's land where it is 'first in, best dressed'
- Historical neglect of coastal management
- The human desire for living as close to the sea as possible
- Increased affluence and mobility allowing a rush to develop the coastline
- Speculation creating enormous incentives to develop the coastline and encroach on public coastal land and the coastal marine area
- The shortness of human memory mixed with the "it won't happen to me" syndrome – the expectation that coastal hazards will, if at all, get a future owner.
- A long and dynamic coastline experiencing erosion, inundation and accretion
- A high proportion of soft shorelines, almost all of which have been denuded of their native (salt-water-loving) sand binding vegetation by early stock grazing, and were then re-planted with the easier-to-grow marram grass (and other weeds) that do not tolerate salt water and do not grow healthy foredunes.
- A mobile, uncertain jurisdictional boundary along the coastline
- Human induced climate change increasing coastal hazards.

An analysis that focussed on coastal hazards, and includes discussion, is contained in my *Review of the NZ Coastal Policy Statement 1994 – Coastal Hazards* (Jacobson 2004). Published by the Department of Conservation on the DoC website. See *Volume 1 Chapters 5, 6, and 7 and Volume 2 Appendix 3 The Particular Challenges for Coastal Hazard Management Policy*.

How has coastal governance evolved in New Zealand, and why has it failed?

Why have the substantial coastal governance reforms of the past failed to deliver? It is important to understand how coastal governance evolved under the reforms, and to understand the mistakes that were made and will have to be addressed in future reform.

From the early 1970s especially, there was growing concern that New Zealand's coastline was under threat from excessive and inappropriate development, and proposals for special and improved governance for the coast began in earnest. (Environment Waikato, 2000)

An indication of the level of concern was the 1971 Environmental Council of New Zealand report which recommended that there should be a moratorium on all subdivision of coastal land in rural zones, and on any new building other than that necessary to their present use (unless permitted by the Minister). The Ministry of Works Report on Coastal Development in 1972 similarly highlighted concerns and raised public awareness.

In 1973, the Town and Country Planning Act was amended to declare that the preservation of the natural character of the coastal environment was a matter of national importance.

Perhaps more impressive as a move towards special coastal governance arrangements was the introduction to Parliament in May 1975 of "The Coastal Moratorium and Management Bill". This Bill sought to establish a nationally based coastal planning commission that would have the sole jurisdiction over planning and development of the coastal zone. It also sought to provide for a "New Zealand coastal plan".

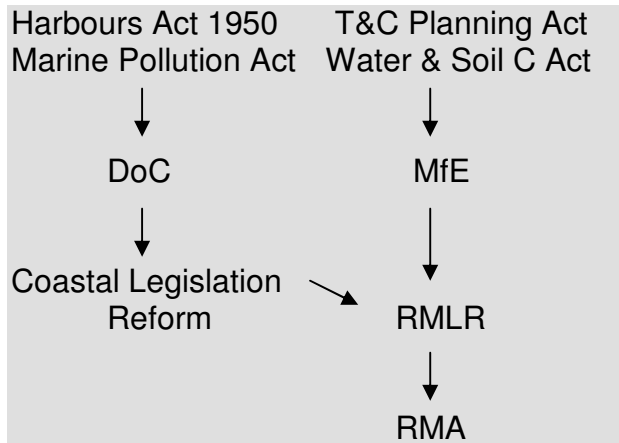
That Bill was never enacted, and coastal development continued apace despite the attempts that Government made to better manage coastal resources (which did not include a specific national policy).

Then, in 1987, the Department of Conservation was created and given a role in administering the Harbours Act 1950, an Act that primarily managed New Zealand's coastal marine area, rivers and lakes for transport purposes (in an era when shipping and ports were the only avenues for international transport and trade, and the environment movement was nascent).

There was clearly a need for more comprehensive management of the coastal marine area, along with a need for that management to be integrated with the management of coastal land. The Coastal Legislation Review was launched, to be undertaken by the Department of Conservation.

Then, in September 1988, the Government directed that the Department of Conservation's Coastal Legislation Review was to be integrated into the

Resource Management Law Reform being run by the Ministry for the Environment.

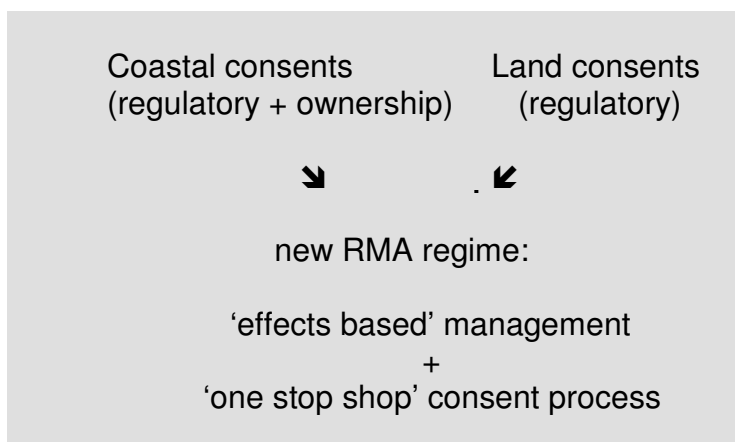


The outcome was the Resource Management Act 1991 (RMA). That Act completely reformed the regulation of New Zealand's natural and physical resources, with some particular provisions for coastal management.

In hindsight, it is clear that what transpired was not so much a merger or integration of the Coastal Legislation Review with the Resource Management Law Reform. Rather, the Coastal Legislation Review was completely assimilated – the special needs of coastal management were subordinated to the bold reforming philosophy and aspirations of the Resource Management Bill.

It is also apparent that, in a practical sense, addressing coastal management became a side show for the Ministry for the Environment (MfE), who were in charge of drafting the RM Bill. It was difficult for DoC as the minor party to inject real attention to the particular needs of coastal management. The reality is that such major and controversial reforms become frenetic. Just as with the later Foreshore and Seabed Bill, the demands of making progress and avoiding controversial problem areas mean that side shows are often neglected and warnings go unheeded in the rush.

The outcome was that coastal management was shoe-horned into the new resource management philosophy of 'effects based' management, and into the new, super-efficient 'one stop shop' consenting process:



This was despite the presumed ownership of almost all the foreshore and seabed by the Crown and the need for the Crown to exercise that ownership in the public interest (as was recognised in the Harbours Act 1950, although the perception of public interest has evolved somewhat since then). Other public land has ownership control and consents under separate legislation, but for Crown owned foreshore and seabed, ownership has to be exercised under the RMA.

It was recognised during the RM Bill deliberations that this was a bold experiment, and new and untested mechanisms had to be cobbled together to make the round peg of integrated coastal allocation and regulation fit into the square hole of 'effects based' regulation and a 'one stop shop' consent process.

The compensatory mechanisms to make coastal management fit included:

- The Minister of Conservation has the final decision on restricted coastal activity consents
- The Crown can impose rentals and royalties
- The Minister of Conservation can amend Regional Coastal Plans
- A mandatory NZ Coastal Policy Statement approved by the MOC.

Notably, however, the concessions to coastal management did not extend to providing explicit guidance on coastal management in the fundamental driver in the RMA, the Part II Purposes and Principles, beyond what had already been inserted into legislation in the 1973 amendment to the Town and Country Planning Act.

There is therefore no RMA purpose or principle specifically addressing the public ownership of Crown owned foreshore and seabed, or the exercising of public ownership duties for that land.

So, integration is a good thing in principle, and compensatory mechanisms were included in the legislation. But was the bold (or careless) experiment a successful experiment?

As the signs (or outcomes) listed earlier suggest, the experiment has failed and it appears to be the result of a combination of legislative and institutional factors.

I will attempt to briefly summarise the outcomes, and the reasons for failure or reduced effectiveness, in the following paragraphs:

The Minister of Conservation final consent on restricted coastal activity consents

The Minister's final consent on a somewhat arbitrary range of large scale activities has proved ineffective, and unworkable in a meaningful way.

The High Court decision on the Whangamata marina, which overturned the Minister's refusal of consent for the marina, made it clear that the process (where, for example, the Minister hears no evidence and has only 10 working days to make a decision) gave the Minister little ability to reach a different decision from the Environment Court. Equally importantly, there is no explicit guidance in RMA provisions on the exercising of Crown ownership duties (or any other special duty or consent criteria for the Minister). This means there is no clear basis for a different decision (or referral back to the Environment Court). There is only a completely unguided 'different weighting of matters' in coming to a decision.

That High Court case has confirmed that the Minister's final consent is reduced, in practice, to little more than a 'rubber stamp'.

It should be noted that, in contrast, the requirement for a Minister of Conservation appointee to be on the Council hearing committee has been useful in practice. However, that in itself is interesting, given that the Minister has no particular duty to undertake under the RMA that is not also the duty of Councils. Hence the Minister's appointee and the other Hearing Commissioners are considering the same matters, and with the same guidance from the NZCPS and other policies and guidance – Hearing Committees should reach the same decision based on evidence and policy whether there is a Minister's appointee there or not.

It has always been apparent that the RMA's extensive delegation of responsibilities to local government was only going to work if local government itself was reformed and decision makers up-skilled and resourced to do a really good job.

For whatever reason, local government elections do not operate as vigorously as national elections, with low voter turn-outs and an apparent lack of appreciation by residents of the powers and responsibilities exercised by councils and the need for serious engagement in local democracy to achieve the best governance.

In relation to the councils' RMA responsibilities, MfE influence (or lack of influence) has played a role. Quite apart from the lack of coastal management guidance in the RMA and the dearth of national policies and standards, MfE programmes such as guidance for and training of Hearing Commissioners have been slow to come on stream...

There is also an issue of leadership, and of championing the special needs of coastal management, which I address separately below.

The Crown ability to impose rentals

The Crown's ability to impose rentals for occupation of Crown owned foreshore and seabed was negated by a regional council refusal to collect them, and hence failed almost as soon as the RMA came into force.

This was because the RMA provisions gave the regional councils no reason to go to the trouble: Revenue went straight into the Crown Bank Account (the 'Consolidated Fund').

The replacement regime for imposing rentals (unhelpfully called "coastal occupation charges") did provide for regional councils to retain any revenue (for expenditure on coastal marine area management) but has also utterly failed.

The new RMA section 64A was so poorly conceived and drafted that despite large amounts of time and money being spent by regional councils, DoC and MfE over many years in consultation and in trying to implement coastal occupation charges regimes, not a single regional council has imposed a regime in accordance with s64A, and not a cent of revenue has been collected. (A sort of exception is Southland, who simply rolled over the old Harbours Act 1950 charges into their regional coastal plan – but these are just arbitrary and nominal charges.)

There have now been 18 years of zero rentals, and there is little memory of private occupiers having an obligation to pay for the privilege of occupying public land.

The Minister of Conservation power to amend regional coastal plans

The Minister of Conservation's ability to amend regional coastal plans has been a workable and useful provision, and the Department of Conservation worked with regional councils on their first round of regional coastal plans. However, a number of factors has reduced the effectiveness of this compensatory measure:

First, there is little explicit guidance on coastal management in the provisions of the RMA, with guidance left entirely to the NZCPS (eg. the Crown interest in the public foreshore and seabed is mentioned in the RMA only once - as a matter that may be addressed in the NZCPS).

Second, in the absence of any distinct duty for the Minister of Conservation, the only basis for seeking an amendment was that a plan provision was not "not inconsistent with" the NZCPS. (now amended to "give effect to")

Third, most of the first round of regional coastal plans were well advanced before the first NZCPS came into force in 1994.

Fourth, clearly the usefulness of this mechanism into the future is entirely dependent on the quality and comprehensiveness of the NZCPS (addressed further in the next section).

Fifth, while regional councils can prepare regional coastal environment plans, most did not, and integration was not generally achieved in a thorough way through the Regional Policy Statement.

Sixth, and of particular importance for coastal hazards and climate change, there was no formal role for the MoC in relation to District Plans, where much of the planning for coastal hazards must take place. (Again, there is total reliance on the NZCPS.) In practice, for the first round of RMA plans, DoC monitored the regional coastal plans, while MfE was left to monitor the district plans.

The mandatory NZ Coastal Policy Statement approved by the Minister of Conservation

This clearly has turned out to be the critical, and probably only meaningful, compensatory measure to be included in the RMA for coastal management.

However, especially given its burden as the only meaningful coastal governance instrument, problems have become apparent.

First, in somewhat of a vicious circle or a 'Catch 22', the deficiencies in the RMA directly reduced its potency:

- lack of clear guidance in the RMA about what sustainable management meant for coastal management, in particular for exercising Crown ownership and allocation of the coastal marine area, provides no solid base for policies on how "to achieve the [sustainable management] purpose of this Act in relation to the coastal environment of New Zealand" (s56).
- Policies cannot trump the deficiencies of the Act in relation to imposing a rental regime.
- The RMA drafting was such that the first Board of Inquiry felt unable even to state objectives in the first NZCPS, let alone a vision for sustainable coastal management in New Zealand.

Second, the 2004 review of the NZCPS (Rosier, 2004 & Jacobson, 2004) found that there was a lot of concern about the failure to implement the NZCPS, especially at the district council level. (There was much less concern about the quality of the policies that were contained in the NZCPS.) See, for example, sections 6.3 and 7.6 of Review of the NZCPS 1994 – Coastal Hazards (Jacobson 2004)

The 2004 NZCPS review found that this failure of implementation was often linked by practitioners to a perceived absence of national leadership and an effective champion for the NZCPS (or, more generally, an effective champion for the importance and benefits of sustainable coastal management). Such national leadership needs to be combined with capacity building in local government and local communities, so that the NZCPS policies would be embraced and then translated into local action. This clearly has not yet happened.

These points suggest there is also a need to examine the evolution of the agencies and institutions involved in coastal governance.

The evolution of the agencies involved in coastal governance

Under the Harbours Act 1950, it was originally the Ministry of Transport that managed the coastal marine area. When DoC was formed, that role was largely given to DoC for outside commercial ports. DoC was formed from the 'green dot' parts of three organisations – Forest Service, Lands and Survey, and the Wildlife Service.

A Coastal Section was also recruited from a variety of other sources. Those sources did not include the Ministry of Transport. The Coastal Section was both small and without established whakapapa in the new Department of Conservation.

This 'orphan' or 'bastard' part of DoC that addressed, first, the Harbours Act duties and then the Minister of Conservation's RMA sustainable coastal management role (as distinct from the various marine conservation roles, including marine mammal, marine reserve and fisheries bycatch roles) has always struggled to achieve full understanding and status alongside the Department's conservation role under the Conservation Act and first schedule Acts (although the Coastal Section was expanded briefly to a substantial size to produce the first draft NZCPS).

The budget of DoC has not become any less squeezed over the years, and the ongoing low status of the sustainable coastal management part of DoC has been underlined in recent times: First by its inclusion in the "Marine Conservation Unit" (when it is definitely not part of any 'conservation' unit, and is coastal focused rather than just marine focused), and then its dispersal into general advocacy and policy sections in 2008. Perhaps more telling was the DoC approach to preparing the new Proposed NZ Coastal Policy Statement in 2007 and 2008. In contrast to the specially constituted unit formed within the Coastal Section to prepare the first Proposed NZCPS in the early 1990s, the task of coordinating the second generation NZCPS was simply assigned to a policy analyst in the Central Policy Division, who then engaged consultants. (I am particularly disappointed with the proposed Objectives, and with the absence of a chapter devoted to exercising Crown ownership of the public foreshore and seabed. We have yet to see the Board of Inquiry's recommended objectives and policies – which had to build upon the proposed objectives and policies and the submissions on them).

The Department of Conservation has ultimately failed to pick up the mantle of the early 1970s campaigners and be an effective champion for sustainable coastal management. This was never going to be an easy task, given the acknowledged neglect of coastal management in comparison with land management and the pressure for coastal development. It was always going to be very resource hungry, at least initially, and needed a very front-foot

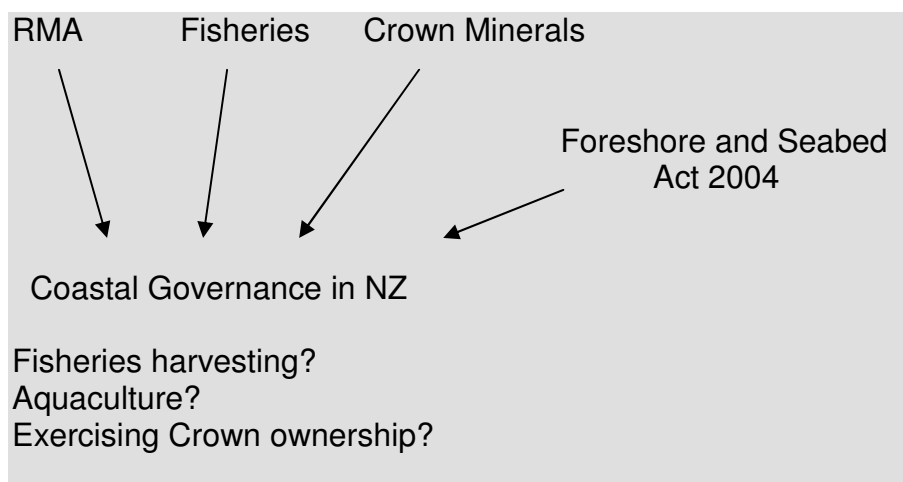
national leadership approach to capture the public imagination, and to channel public and NGO concern over rampant coastal development into community awareness and local action. Anything less, as is evident with New Zealand attempts to develop and implement climate change greenhouse gas policies, will not alter the strong momentum for Business as Usual.

The submerging and assimilation of the Coastal Legislation Review into the RMLR juggernaut may in itself have scuttled any chance of a real challenge to Business as Usual with coastal development. The loss of focus on coastal governance, and the weak coastal provisions that emerged in the RMA, certainly made the task more daunting - and probably impossible - for the Department of Conservation.

It is worth saying that, while DoC could possibly have done better, it is clear that MfE (with its role of 'setting the rules, rather than being a player or advocate', its lack of national presence on the ground, its absence of experience as a land manager, and its track record with the coastal provisions it allowed into its effects-based RMA) was not in a position to do the job, let alone do it better. Similarly, enough new and challenging roles were already devolved and delegated to regional councils – it is inappropriate and unrealistic to expect that they should or could fulfil a national leadership role (especially without very substantial central government resourcing and support).

It is also notable that the effectiveness of the NZCPS has not been systematically monitored or reported on through its 15 years. In particular, its implementation (especially through District Plans) has not been methodically supported, monitored, or reported on. That is an enormous task in itself, and just a small part of proactively promoting the NZCPS and the benefits of sustainable coastal management.

The Foreshore and Seabed Act 2004 and other legislation



There is also a bigger picture: While the RMA did replace a whole range of legislation and regulation (Town and Country Planning Act, Water and Soil

Conservation Act, Harbours Act, Marine Dumping Regulations, etc), it still fell a long way short of achieving integrated coastal governance.

The most significant outliers were the Fisheries Act and Crown Minerals Act.

And then the Foreshore and Seabed Act 2004 came from left field. (The Foreshore and Seabed Endowment Revesting Act 1991 had already addressed the status of Crown owned foreshore and seabed and protected it from sale, as well as re-allocating the old endowments that had been made to Harbour Boards, in the light of the new regime of regional councils and commercial Port Companies, but had not addressed Maori claims to ownership.)

There remain tensions over coastal management between the RMA and the Fisheries Act. The Fisheries Act is still focused on single stock management and there is no real resolution over how to deal with matters such as damage to the seafloor through fishing practices such as bottom trawling or scallop dredging (or effects such as impacts on tidal inlet sediment processes from shellfish harvesting).

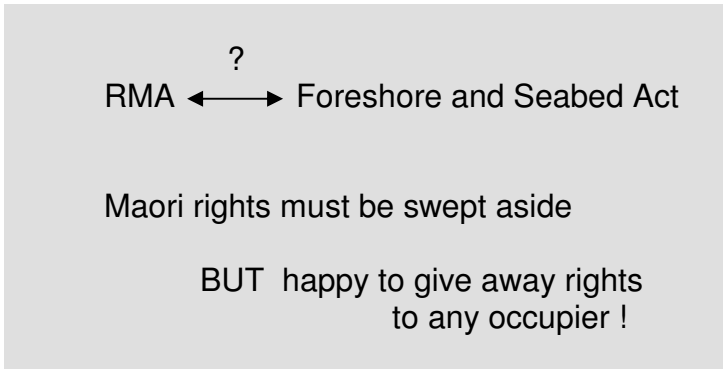
Aquaculture is caught between the two Acts, and one way of looking at it is that, ironically, there are big problems for aquaculture because exercising ownership is so strong in one Act (ie. protecting the quota ownership rights of wild fishers, for example declining aquaculture in much of Golden and Tasman Bays because of the displacement of scallop and snapper harvesting) and so weak and dysfunctional in the other Act (ie. no resolution of how to successfully allocate space and charge rentals for aquaculture under the RMA). In fact, the Marine Reserves/Marine Protected Areas legislation makes it a three way tussle for allocation that at present is working only for the wild fishers.

So, there is now the prospect of special legislation to promote aquaculture (with little indication that the underlying problems with the existing legislation will be addressed and any real integration will be achieved).

Then there is the Foreshore and Seabed Act 2004. On the one hand, I joined the march on Parliament against the Bill, and found myself in the company of many others, including other pakeha such as Geoff Park who thought it an ill-considered response to the long festering problem, and an unfortunate return to the Treaty of Waitangi violations of the past.

On the other hand, I at least welcomed the acknowledgement that the seabed and foreshore are very important to all New Zealanders, and should be protected as the common heritage of all New Zealanders. I also welcomed some certainty over ownership in the hope that the void in exercising ownership of the foreshore and seabed would be addressed.

Coastal governance under the RMA and Foreshore and Seabed Act 2004



Unfortunately, in a continued sidelining of coastal governance needs, there was almost no linkage created between the foreshore and seabed legislation and the Resource Management Act.

Ironically, the exception was consequential amendments to the RMA to ban the sale of new reclamations. This was apparently a response to the Government recently having to purchase the Westhaven Marina from the Auckland Port Company to get it into public ownership (Council ownership) so that some very non-nautical development could be prevented. This was in effect a recognition that the RMA could not achieve desired goals for the seabed and reclamations through RMA regulation alone and without some effective public ownership being exercised. (It is notable, however, that the legislation did not address the absence, in RMA s355, of any requirement for occupiers to apply for rights to occupy Crown owned reclamations - and hence pay a rental, instead of simply squatting on the public land.)

Even more ironically, the Government thought it so important to obtain ownership of the seabed and foreshore for the public that Maori rights should be swept aside and any claims to ownership taken away, BUT was quite happy to continue giving away rights to the public foreshore and seabed to all and sundry for zero rental.

A failure to exercise ownership, once ownership has been so vigorously asserted by the Crown, is inexcusable – it is bad for both Maori and all other New Zealanders. It will be very difficult for the Crown and Maori to go from ‘no management’ to ‘co-management’: If the Crown exercised ownership properly in the interim, it could at least offer to share the benefits of active ownership with Maori – whether that be through sharing revenue or through supporting kaitiakitanga by iwi and hapu (in ways that can be done by an owner but not a regulator).

The foreshore and seabed legislation failed even to amend the RMA to refer to the new category of public land – the “public foreshore and seabed”. In the Resource Management Act it is still referred to as “land of the Crown in the coastal marine area” despite the official new status of ‘public foreshore and

seabed', and the stated s3 object for that public foreshore and seabed given with great fanfare by the Foreshore and Seabed Act 2004:

Foreshore and Seabed Act 2004

3 Object

The object of this Act is to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders in a way that enables the protection by the Crown of the public foreshore and seabed on behalf of all the people of New Zealand, including the protection of the association of whanau, hapu, and iwi with areas of the public foreshore and seabed.

To return to one of my themes, an important example of giving away rights to individuals and not protecting the public foreshore and seabed on behalf of all the people of New Zealand (and one that is not often thought of as occupation that could attract a rental) is allowing beachfront property owners to cover valuable public beaches with large boulders.

This is particularly the case where the sole purpose and benefit of public beach burial is the protection of private properties, and where consent is given without taking proper account of public ownership, and without any compensatory public access over private property behind the buried beach. Adding insult to injury, there is often an expectation that the public (general ratepayers) will foot a large part of the bill, as is the case with Stage Two of the Castlepoint seawall in the Wairarapa (which is still being pursued after initial refusal and without any agreement on a contribution from the property owners to be protected).

In another example, there is no mention of the Foreshore and Seabed Act 2004 or the protection of public land that is the common heritage of all New Zealanders in the Environment Court analysis of the Waihi Beach seawall proposal (A098/2007):

"the ... appellants went so far as to suggest ... that it is selfish for the beachfront property owners to expect their properties to be protected ... at the expense of the natural beach environment and the wellbeing of others who use and cherish the beach...

...from an RMA perspective, the case is not about taking advantage of a public asset for private gain Rather, it is about how the natural and physical resources of this coastal area should be sustainably managed, given the notable hazard risks" para [80]

The Waihi Beach outcome was:

- Boulder walls on public foreshore and seabed blocking public access at higher tides along the coastal marine area

- No compensatory public access on private property (on top of wall or behind wall)
 - only emergency access

The rub is that, indeed, the RMA and the definition of sustainable management is silent about how to exercise public ownership of the supposedly very valuable public foreshore and seabed under the RMA. And the RMA remained silent despite the hooahaa about the iconic nature of the foreshore and seabed during the foreshore and seabed debate, and the passage of legislation that had the express object of protecting the public foreshore and seabed as the common heritage of all New Zealanders.

It seems to have been completely forgotten by many that the ownership duties for the public foreshore and seabed (or land of the Crown in the coastal marine area) are not managed under any Act other than the RMA. The public ownership of other Crown land with public value (and Crown minerals) is exercised in separate legislation, eg. the Reserves Act, National Parks Act, Land Act, Crown Minerals Act.

The outcome of the RMA failing to exercise that ownership duty is evident. In essence, the foreshore and seabed is still a frontier with an absence of ownership management. This was examined in the November 2005 Ecologic Research report “Implementation Failure: Resource Rentals for the Occupation of Coastal Space” (Ecologic, 2005), which included the following quotes:

A common with a right to free use and occupation?

“Fundamental tenet - my boatshed, my right, my piece of land” (Townsend, MfE)

Capture of the resource, and for free?

“first in, best dressed, for free” (Hon Doug Kidd)

“upper middle class...welfare” (Hon. Doug Kidd)

It almost requires a thought experiment to remind us how completely the concept of exercising Crown ownership has been lost in the RMA. It is instructive to imagine how public foreshore and seabed would be managed if it was instead ‘dry’ city council owned land or reserve with analogous values:

Thought experiment:

For city council owned land, ownership control is taken for granted. It is not available willy-nilly for anyone to develop (except where enforcement fails) – it is allocated to optimise city wellbeing and fit into Council strategies and

long term projects. Income from city council land occupied by businesses and private individuals is also available for park and open space and recreational developments.

How would it function if occupation of council land was free? And if anyone could occupy council land subject only to environmental controls? And if Council was unable to allocate its land for civic projects (or for private developments seen as beneficial to the city)?

Maybe (like foredune property owners) homeowners on unstable hillsides could build retaining structures over adjacent council park land and public walkway land (and expect general ratepayer funding assistance). The Council would offer assistance with protecting the private properties, and would be told by the adamant property owners that there is no way any protection works are going to happen on their private properties – only damaging and obstructive works on the park land and public walkway land will be countenanced!

Maybe a coffee trailer that got in first with a 25 year consent could block a swimming pool or town hall construction project (like a few swing moorings could block a port or marina development).

Maybe (like marine farmers) dairy farmers could graze available DoC and council land for free because dairying is so important for the economy (in line with marine farmer submissions to the NZCPS Board of Inquiry).

It is time to move on to look at what lessons can be extracted from past reforms to ensure that we learn from our mistakes with future reforms.

What lessons can we extract to guide future reforms?

We should start with some acknowledgements:

First, the serious concerns over managing coastal development have been with us since the early 1970s, so this is not a new problem that we have had little time to come to grips with.

Second, policy and legislative attempts to address recognised coastal development problems, including the RMA, NZ Coastal Policy Statement and Foreshore and Seabed Act 2004, have failed to deliver for coastal governance.

Third, climate change has emerged as a new and additional problem. This problem now sits alongside the strong momentum for Business as Usual in both greenhouse gas production and coastal development, plus all the development that is already in existence from the last 30+ years of poor control. It is therefore clear that it will be no mean feat for coastal governance in future to successfully encourage and guide the sort of coastal environment development that will avoid a big mess in a climate changed future.

Fourth, in the light of past reforms, it also seems necessary to state the obvious: That it is an important step for future reforms just to acknowledge that New Zealand is a country with a market economy, including a strong tradition of ownership rights, and hence economic signals will be powerful drivers of human behaviour.

Fifth, and again stating the obvious, it is an important step to acknowledge that managing public land which has enormous importance to development, recreation and conservation needs more than just mitigating the adverse effects of activities – it needs ownership control exercised strategically for the public good.

These five acknowledgments should lead to the recognition that coastal governance in New Zealand needs the full governance arsenal of good ownership control, complemented by good regulation, complemented by good market signals and accountability.

In essence, the goal for coastal governance reform is:

Ownership management: the public foreshore and seabed managed as a valuable public asset and managed intelligently and strategically for the long term public good.

Regulation: smart guidance that controls adverse effects on the coastal environment (having regard to dynamic physical and biological processes that ignore a mobile MHWS boundary, and in the knowledge that sea level is going to rise and coastal hazards will increase over time).

Market signals, good information and accountability: encouraging smart investment away from public land and future coastal hazard areas. This needs good information, and good market signals that avoid perverse incentives to develop the coast (it may also need direct government support to provide further positive incentives). Where investors still choose to make risky investments, then personal accountability needs to be signalled and enforced.

It is a 1970s governance model to try to achieve good outcomes through the stick of regulation alone. To move into the 21st Century, New Zealand needs to become responsive and flexible, and be willing to use all the governance tools available. It also needs to have agencies that have clear goals and can operate in this way. The different agencies will also have to achieve good collaboration with each other and with the community – top-down leadership responsive to bottom-up engagement. At a national level, given that coastal goals are more than just development goals, or conservation goals, or environmental protection goals (and that there has been a failure of national leadership on coastal management) it may be most effective to have a new agency – perhaps a New Zealand Coastal Commission...

But that is beyond the scope of this paper. I think my message would be that we must focus on action to get all the three complementary parts of good coastal governance up and running together, however that can be achieved. Just getting the basic framework in place would be great, and we should not allow ourselves to get distracted from that goal.

Once New Zealand has the basic framework, and it is running with whatever imperfections, we can then work on refinements and learn as we go. (In contrast, for example, when there is no Crown ownership asserted we are not learning about how to exercise Crown ownership alongside environmental regulation, and when there are no coastal rentals we are not learning about how to set fair rentals.)

It is clear that the regulation part of the triumvirate is at least up and running, even if far from perfect. Although I would like to make refinements to the regulation part of the mix, my logic suggests that we need, in the meantime, to focus on the other two parts.

The basic needs for reform

What sort of reform is needed?

Given the flawed legislative foundation, I can see no alternative to a legislative reform process.

(Note that policy is founded on legislation, and cannot go it alone where the legislative foundation is deficient.)

Next, history seems to have demonstrated that dealing with coastal management as a sideshow, and particularly shoe-horning coastal reform bits into other legislative programmes, will not do the trick. Legislative reform that is focussed on coastal governance, and willing to look at coastal governance from first principles, is what is needed.

This is not to say that there necessarily needs to be special coastal legislation and more fragmentation. Coastal management and exercising ownership could, in theory at least, happen under the umbrella of the RMA, but only if RMA truly embraced coastal management and the exercising of Crown ownership of the public foreshore and seabed as an equal partner to effects-based regulation. That would have to include recognition of Crown (or Maori) ownership duties in Part II, with a definition of sustainable management that explicitly addressed the sustainable ownership management of the iconic public foreshore and seabed.

Also, hand in hand with equality in RMA provisions, there would have to be some equality of influence by the environmental regulator and the coastal manager in the administration of the RMA. I am not sure how this could be achieved in practice.

Overall, the failure of the bold (or careless) experiment, where coastal management was squeezed into the RMA, suggests that a separate Act with specific ownership duties, and with those duties championed by a single Minister and Department (but functioning in an integrated way with the RMA regulation) may in fact be the best way to go.

A more comprehensive approach would be to have an agency focused on coastal management, and hence able to guide coastal legislation in a focused way. It could address coastal regulation and allocation in a comprehensive way, with clear goals, and with unambiguous duties.

Ensuring that there is good information for coastal investment; using a range of economic instruments to ensure the right market signals are reaching the market; and ensuring personal accountability for risky investment are also matters that may need to be spelled out more clearly in legislation before they can be given effect with good policy.

Either way, if new legislation focuses on, and gives voice to, coastal management and the exercising of the ownership of public foreshore and seabed on behalf of all New Zealanders, then that would provide a much better foundation for an effective NZ Coastal Policy Statement.

So, what would the elements of a basic reform package be?

Elements of a basic reform package

Ownership management elements:

- A purpose and principles in legislation that explicitly address the exercise of Crown ownership of the public foreshore and seabed alongside environmental effects regulation under the RMA.
- A national policy statement on exercising Crown ownership of the public foreshore and seabed
 - which could be part of the NZCPS, and which would address any agreements with Maori over foreshore and seabed management that emerge from the review of the Foreshore and Seabed Act 2004)
- An ownership consent for occupation of the foreshore and seabed (whether from the Crown or Maori)
- Explicit guidance on how to exercise the ownership consent
 - because of past neglect and lack of practice, developing criteria for assessment (there will be some distinction and some overlap with environmental effects assessment), and making provision for strategic allocations (and interim moratoria to enable strategies to be developed) would be a very good idea.
- Coastal rentals for occupation
 - This should be nationally imposed but run by regional councils.

- Rentals should initially be modest, with provision for increases over time and as market information is collected.
- Revenue should go to regional councils (and Maori in line with any agreement over ownership and/or partnership over the foreshore and seabed)

Market signal, good information, and accountability elements:

- Coastal rentals for occupation
 - rentals are repeated here because they provide important market signals as well as revenue
 - in time, as they are refined, rentals will provide good market signals that avoid unnecessary occupation, encourage efficient use and sharing space, encourage minimising the amount of public space occupied, and discourage speculation and locking up of public space.
- Good information on coastal hazard risk and coastal values
 - good coastal hazard information is the cornerstone of risk-based management. The resistance to coastal hazard zones needs to be overcome.
 - there should be national standards for assessment of coastal hazards and identification of coastal hazard zones.
 - a concerted effort to identify the coastal values that New Zealanders want protected into the future would help with all aspects of management (the messages about this appear to me somewhat contradictory – a free-for-all frontier or a valuable public asset to be managed carefully for the wider public good?).
 - the availability of good information is also the foundation for later accountability (“you knew the risks you were taking, and the public expectations about protecting coastal values...”)
- Accountability for risky investment enshrined in policy or legislation
 - this element is critical because there needs to be a real acceptance that dynamic and ephemeral coastal features are not a place for ‘permanent’ habitation or development. This is especially the case with climate change happening. (Jacobson 2004 - See Section 7. Looking Forward –7.8.6 *Private vs Public Good.*)
 - If risky development is undertaken on ephemeral coastal features, then it should be made very clear to all parties that the investment can only be protected in future by measures that do not have adverse effects on coastal values and adjacent public land (eg. dune restoration). Otherwise, the development will have to be removed at the expense of the investor.

- Financial support for local initiatives
 - given climate change and the need to turn around lemming-like behaviour patterns, the government may have to accept that it is a good investment to support some best practice examples in order to overcome short term cost barriers.
(this is in the nature of a market signal, and successful best practice examples can be the best sort of information for communities)
- Monitoring whether plans and consents are giving effect to the NZ Coastal Policy Statement
 - this is a form of accountability both for the policy maker and the policy implementers
 - there should be a requirement for regular reporting to the Minister of Conservation on the effectiveness of the NZ Coastal Policy Statement
 - it is one thing to make policy, and another to achieve implementation of the policy

Regulation elements:

(If there is one regulation element that warrants attention now, it is probably the need to ensure that there is better integration of management across the MHWS boundary.)

- Control of activities on the coastline should be blind to the exact location of the line of MHWS (especially to better manage responses to coastal hazards)
 - regional coastal plans and district plans should be required to have rules that create certainty of process for consents close to the MHWS boundary (activities should not swap from 'permitted activity' to 'non-complying activity' as erosion/accretion moves the line of MHWS! eg. Wainui Beach seawall in Gisborne, or the 'Water's Edge' seawall in Paraparaumu)
 - regional coastal plans and regional policy statements (or a regional coastal environment plan) should be required to provide guidance for consistent treatment of activities that are near to, or span, the MHWS boundary

Support for reforms

I recognise that none of these basic elements of reform can happen by waving a magic wand, especially after years of 'first in first served' development and zero rentals.

Not to mention the Government's fast track ambitions for the RMA, the deep 2008-2009 recession, and the May 2009 budget that has just lopped \$54 million from DoC's budget over four years.

But the penny might drop that National is a supporter of the market; the Government has committed to reviewing the Foreshore and Seabed Act 2004; and climate change may become impossible to ignore!

Aside from all this, any attempt at reform will need at least a champion for coastal governance, concerted support from NGOs, a more general commitment by Government to achieving long term sustainable coastal management in the light of climate change, and the resources to undertake consultation and put together all the elements of a basic reform package.

I am not sure how this can be made to happen and succeed against a very strong Business as Usual lobby. NGO's would have to play a big role in lobbying government as well as inspiring and mustering support from New Zealanders who want to protect NZ's iconic coastline.

There are many other aspects of coastal governance that could be addressed by reform, but we should not be distracted from doing the basics first.

Will the current reforms help?

Clause 20 of the RM (Streamline and Simplify) Amendment Bill proposes the removal of the MoC final consent for restricted coastal activities

As stated above, simply removing the Minister of Conservation consent on restricted coastal activity consents will solve nothing. Rather, it is symptomatic of both:

- the failure of the RMA to exercise ownership in a meaningful way, and
- the growing invisibility of coastal marine area ownership duties in the effects-based RMA.

Another proposed amendment that caught my attention was the removal of the non-complying activity status. It is far from clear how this would assist, for example, in clearly signalling (for the benefit of all parties) that development in coastal hazard zones is effectively unwanted and there is an onus to show that any development or redevelopment includes measures to effectively reduce coastal hazard risk over time.

The proposed amendments in themselves underline the need for a fresh and comprehensive look at coastal governance in New Zealand.

I was heartened to see the EDS submission on the clause 20 proposed removal of the MoC final consent (at paras 71-72):

71. ... EDS considers that as the seabed and foreshore is currently owned by the Crown, and in the future parts of it may be owned by iwi, if someone wants

to use it for a private purpose that person should attain the landowner's agreement. Provisions for such owner consent could be provided for in legislation separate from the Act such as the Conservation Act 1987.

72. This would provide a similar regime to that which currently operates for Crown- owned minerals where environmental consent is obtained under the [RM] Act and consent from the Crown as owner is obtained under the Crown Minerals Act 1991. Such a separation of roles for the coastal marine area would not only allow for the proper exercise of the landowner's discretion to decline consent, something which is currently constrained under the Act. It would also allow for a proper regime to be developed for the collection of coastal occupation charges, similarly to the royalty regime for minerals.

Conclusion

Coastal governance in NZ is not in a healthy state, and climate change is bearing down on us.

Are we going to recognise the need for some fundamental reforms to coastal governance?

If we do recognise the need, will it still be put it in the 'too-hard basket' (until we are forced to take action by some social or financial catastrophe that cannot be ignored)?

Or will we be farsighted and brave enough to do a proper job of making and taking opportunities for meaningful reform of coastal governance?

In other words, will we pursue truly sustainable management for our coastal environment? Or will we muddle along and wait for a catastrophe, or until ratepayers and taxpayers are paupered by attempts to hold back the tide, King Canute fashion?

Mike Jacobson

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