

Prepared for the Minister of Conservation
by the Department of Conservation

Review of the effect of the NZCPS 2010 on RMA decision-making

Overview and key findings



Department of
Conservation
Te Papa Atawhai

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Review of the effect of the NZCPS 2010 on RMA decision-making.

Part 1 – Overview and key findings.

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Executive summary

1. The New Zealand Coastal Policy Statement (NZCPS) is prepared by the Minister of Conservation under the Resource Management Act 1991 (RMA). Its purpose is to state policies in order to achieve the RMA's purpose in relation to the coastal environment of New Zealand¹ and it is the only mandatory national direction instrument under the RMA. The current NZCPS came into effect on 3 December 2010.
2. Policy 28(1)(c) of the NZCPS 2010 requires the Minister of Conservation to assess the effect of the NZCPS on regional policy statements, plans, resource consents, and other decision-making within 6 years of it coming into effect. Accordingly, the Department of Conservation (DOC) has undertaken a review of the effect of the NZCPS on RMA decision-making (the Review).
3. The NZCPS 2010 replaces the NZCPS 1994 and is intended to address 'significant deficiencies in coastal resource management'.² It places a greater emphasis on strategic and integrated planning, anticipating that its implementation will result in key issues being resolved through planning and plan making rather than consenting processes. To support this approach, it requires policy statements and plans to identify key characteristics and values (for use, development and protection) in the coastal environment, and directs policy outcomes for these. The most restrictive policy applies to areas with the highest values, with greater flexibility provided for areas with lower values. Some particular uses are identified and the characteristics of activities in the coastal marine area are highlighted. In recommending the NZCPS 2010 for gazettal, the Minister of Conservation intended that it would give 'appropriate relative weight and attention to protecting natural values and allowing for economic use and development'. Her recommendation was also based on the expectation that the new NZCPS would 'support progressive improvement' with gradual implementation.³

¹ RMA 1991, s 56.

² BOI Report and Recommendations to the Minister of Conservation (2009).

³ Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010, para 3.

Key findings of the Review

A. Strategic and integrated planning underpins effective implementation

- The NZCPS 2010 directs ‘up-front’ strategic planning for subdivision, use and development, and other activities.
- Managing cumulative effects is particularly challenging at the resource consent stage in the absence of a robust, wider strategic planning framework in policy statements and plans.
- There has been good progress where councils have adopted a strategic and integrated approach to coastal planning (e.g. Bay of Plenty, Auckland and Northland), but challenges remain and not all councils are prioritising strategic planning (due to a lack of technical information, high costs, silo approaches, etc.).
- There is a concentration of complex implementation issues in some places, e.g. Marlborough and the Hauraki Gulf.

B. Implementation is well advanced in some places but less advanced elsewhere

- Implementation through policy statements and plans is well advanced in some regions and districts, and less advanced elsewhere.
- When approved, it was acknowledged that the issues were complex and implementation of the NZCPS 2010 would occur gradually over a period of years.
- Resourcing issues have been identified as a factor impeding timely processes by councils.

C. Consistent methodologies and further implementation guidance are still required

- The lack of consistent methodologies is problematic for NZCPS 2010 implementation, e.g. identification of outstanding landscapes and coastal hazards.
- Guidance to assist councils with implementation of the NZCPS 2010 needs to be completed.

D. Strongly polarised views on the implications of the *King Salmon* decision on NZCPS directive policies

- There are clear interrelationships between the directive policies and the balance of the NZCPS 2010, making it problematic to consider one without the others.
- There is a clear understanding that the directive policies in the NZCPS are aimed at protecting ‘the best of the best’, but views are strongly polarised on the implications of the *King Salmon* decision on these policies.
- In particular views are polarised on the level of protection that is appropriate for indigenous biodiversity and outstanding natural character, natural landscapes and natural features and whether some activities are so important (or present such significant benefits) that adverse effects should not need to be avoided. If adverse effects are not required to be avoided there are also polarised views on matters such as who should make decisions about the type and effects to be allowed, and which RMA process should be used for such decisions (national direction, policy statements and plans, or resource consents).
- These are important issues that should be widely discussed.

Implementation progress through policies, plans and consents

4. The Review found that implementation through policy statements and plans has substantially progressed in some regions and districts, and is ongoing elsewhere.⁴ Implementation through individual plan change and resource consent decisions has been quicker where these processes have occurred.
5. However, progress has been uneven. In general, implementation is more advanced in regions than in districts and regional policy statements are more advanced than regional coastal plans, reflecting regional councils' interests in advancing second-generation regional policy documents ahead of other documents and their responsibility for the coastal marine area. Some of New Zealand's smallest councils by ratepayer base have complex coastlines and high-profile resource management issues.
6. When approved, it was acknowledged that implementation of the NZCPS 2010 would take time. Some councils are not as far through the RMA's Schedule 1 process but have undertaken, or are undertaking, the background work and consultation that is required before a proposed policy statement or plan can be publicly notified. Councils reported that their decisions on coastal planning priorities were being led in part by the NZCPS 2010.
7. The available data indicate that applications for coastal permits are approved at a similar rate to other consent categories and are concentrated in three regions (Marlborough, Waikato and Northland).⁵ This geographical spread is also reflected in the number of decisions (Board of Inquiry and Court) that have substantively considered the NZCPS 2010.
8. DOC has led the provision of implementation support and guidance on the understanding and interpretation of the NZCPS provisions, but the guidance is not complete. Feedback through the Review indicated that this guidance should be completed as a priority. DOC continues to participate in pre-statutory and statutory policy statement and plan making processes.
9. The Review identified a wide range of resourcing issues that are impacting on council implementation of the NZCPS 2010, including competing priorities directed by other national policy statements (NPSs). The information and planning requirements in the NZCPS 2010 are also resource and time intensive for councils.

⁴ Information on progress is summarised in Tables 2 and 3, and detailed in Parts 2D and E.

⁵ Ministry for the Environment (2016). *National Monitoring System for 2014/15*. Ministry for the Environment, Wellington.

Strategic and integrated planning processes are challenging but underpin effective implementation

10. The Review found that councils have made substantial progress in increasing the strategic content in regional policy statements and plans, including up-front identification of high-value areas and uses to give effect to the NZCPS 2010, particularly in relation to Policies 11 (Indigenous biological diversity), 13 (Preservation of natural character) and 15 (Natural features and natural landscapes), but also the provisions that guide planning, use and development, such as Policies 7 (Strategic planning – providing for future residential, rural residential, settlement, and urban development), 8 (Aquaculture) and 9 (Ports).
11. The Review also found that councils are increasingly considering strategic and spatial planning processes in the coastal environment. Such processes can take place outside RMA processes with their outcomes included in policy statements, and regional and district plans.
12. However, some participants in the Review reported that councils are not always making strategic planning a priority, despite it being critical for effectively providing for use and development. This is due to a number of challenges, including a lack of technical information to support planning and the expense and time involved in obtaining that information. Increasing interest in undertaking activities in offshore and remote marine locations has compounded technical and resourcing challenges.
13. Strategic planning in coastal environments has also grappled with the inherent tension between certainty (for resource users in particular but also for people who are concerned about the enduring protection of high values) and flexibility for new opportunities and priorities. Some pressures from new and emerging activities anticipated in 2010 have not eventuated while others continue to be present.
14. The Review (through the analysis of plan progress, consents and decisions, and stakeholder discussions) identified a concentration of complex implementation issues in some places, e.g. Marlborough and the Hauraki Gulf. A number of participants focused on the spatial planning project for the Hauraki Gulf as an example of an effective, well-informed, participatory planning process. Some participants considered that the obvious issues and strongly polarised views in the Marlborough Sounds could be advanced by a focused and participative strategic planning exercise.
15. Overall, the Review found that the direction for strategic planning and provision for use, development and protection in the NZCPS 2010 is broadly being given effect to but that significant challenges remain.
16. Tangata whenua have a key relationship with the coast and a strong desire to be involved in decision-making in the coastal environment, including any changes to key policy documents such as the NZCPS 2010. Tangata whenua see the NZCPS 2010 as supporting their strong interests in decision-making on coastal environment matters, but strong relationships between councils and iwi are critical

to effective implementation. There can be financial constraints on iwi involvement in RMA and NZCPS decision-making, particularly for ‘non settled’ iwi. Some councils provide financial support for iwi to participate in RMA decision-making processes.

NZCPS 2010 provisions for use, development and protection, and the implications of the King Salmon decision

17. A review of the effectiveness of the NZCPS 2010 quickly turns to the implications of the Supreme Court’s decision on *King Salmon* both for the NZCPS itself and RMA decision-making in general.
18. The Supreme Court’s 2014 decision in *Environmental Defence Society v New Zealand King Salmon*⁶ (*King Salmon*) has had significant implications for resource management planning and decision-making, and for implementation of the NZCPS 2010. It featured prominently in the Review.
19. The Review heard wide-ranging and deeply held views on the implications of *King Salmon*, particularly in relation to the implementation of Policies 13 and 15 (relating to natural character, and outstanding natural features and natural landscapes) but also in relation to policies about water quality and biodiversity.
20. An industry view expressed most clearly by the aquaculture industry, is that the NZCPS 2010 lacks balance following *King Salmon*. The concern is that the directive policies (particularly on outstanding natural character, natural features and natural landscapes) give no, or an unduly limited, ability to approve any activity with adverse effects on outstanding areas, regardless of the importance or benefits of that activity. Industry also pointed to ongoing court action as demonstrating uncertainty as a result of the *King Salmon* decision.
21. In sharp contrast, environmental groups expressed the view that the directive policies do not preclude appropriate development in appropriate locations at an appropriate scale, and strongly supported retention of the current wording. Reflecting on their implementation experience, some councils also expressed this view.
22. The direction of the NZCPS 2010 on the protection of outstanding areas was identified by environmental groups as being consistent with the RMA’s purpose and principles. These groups expressed concern that some aspects of NZCPS 2010 implementation post *King Salmon* appear to focus on ‘getting around’ the decision. Similarly, the tangata whenua who were spoken to expressed strong support for directive policies on raw sewage discharge.
23. Environmental groups also considered it premature to change the NZCPS, on the grounds that time (and guidance) was needed to enable regional policy statements

⁶ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

and plans to 'give effect' to the NZCPS 2010 by identifying areas and particular effects that needed to be avoided rather than simply avoiding all adverse effects.

24. There are polarised views on whether some activities are so important (or present such significant benefits) that their adverse effects should be able to be remedied or mitigated rather than simply avoided, and who should be responsible for such decisions if a different approach is preferred over current NZCPS 2010 policy. There are also polarised views on whether 'balancing' should occur for each decision that is made (on policy statements, plan contents and resource consent applications) or whether that direction should be provided within the NZCPS itself.
25. Progress in implementing the NZCPS 2010 through policy statements and plans has continued since *King Salmon*, particularly in Northland, Auckland, the Bay of Plenty and Marlborough. Some questions that have arisen consequentially have been resolved through court decisions while others, particularly in relation to the implications of *King Salmon* for resource consent decision-making, remain in contention.
26. The Review found that any further assessment of NZCPS 2010 policy in relation to the directive policies (particularly Policies 13 and 15) should include a detailed audit of the work completed and underway to implement these policies on the ground. Some of the same issues arose for Policy 11.
27. The Review highlighted the wide interest in these policies, and the clear interrelationships between the directive policies and the balance of the NZCPS 2010, particularly in relation to integrated management and strategic planning for use and development. Therefore, any further assessment should address integrated management rather than focusing on a particular sector.

Need for consistent methodologies

28. The intended focus on planning (rather than consents) requires the identification of important values in policy statements and plans, which depends on 'robust methodologies and consultation processes'.⁷ The Review found that while there has been significant effort at a regional level and some effort nationally, the absence of widely accepted consistent methodologies (particularly for identifying outstanding areas and assessing the effects on them) is of pressing concern to a wide range of stakeholders. This gap is having significant resourcing implications for councils and is increasing the costs of resource management processes for other participants.

⁷ Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010, para 24.

Coastal hazard management is challenging at the local level and will benefit from clear national guidance

29. Implementation of the NZCPS 2010 coastal hazard policies has been challenging and very controversial for some communities. Particular challenges include data availability, community, iwi and stakeholder values, and financial constraints. The NZCPS 2010 policy on coastal hazards represents a significant change in direction from the NZCPS 1994, and councils, while supportive of the coastal hazard policies, expressed considerable concern at the lack of central government guidance to date.⁸ Stronger alignment between the NZCPS/RMA and the Building Act 2004 would also be helpful (i.e. consistency across risk timeframes, extreme events and methodologies for identifying climate change effects).
30. The Review found that support for planning at the regional and national levels is likely to achieve better outcomes because coastal hazard management can be particularly contentious at the local level. However, the lack of an agreed methodology to identify, map and assess coastal hazard risks remains problematic, and national guidance is necessary.

Water quality

31. The Review heard that the water quality objective of ‘maintaining coastal water quality, and enhancing it where it has deteriorated’⁹ is generally appropriate. However, management across the land/coast boundary continues to be an issue. Particular issues of ongoing concern that were raised in the Review are sedimentation and the land-sea interface, including the downstream impact of land use inland of the coastal environment, and sewage/stormwater management and increasing urban pressures in general.
32. A lack of integration between freshwater and coastal water management and standards was noted. Management of the effects of land use on coastal wetlands and estuaries was identified as an issue that falls between the NPS – Freshwater Management 2014 and the NZCPS 2010. Implementation of the NZCPS water quality provisions is hampered in some places by a lack of technical information (particularly with regard to baseline water quality) and the cost of obtaining such information.
33. The tangata whenua spoken to support the strengthened water quality policy direction in the NZCPS 2010 in relation to the discharge of raw sewage. However, tension between tangata whenua values and council and community views on the practicality and cost of separating stormwater and sewage remains.

⁸ The Ministry for the Environment and DOC have developed updated and complementary guidance on climate change and coastal hazards, due for release in mid-2017.

⁹ Objective 1, NZCPS 2010.

Other provisions and issues

34. With regard to some other NZCPS provisions:
- The NZCPS 2010 includes new policy to guide the identification of the inland extent of the coastal environment (Policy 1). Although not directly required, the Review found that many councils have undertaken coastal environment mapping and that this mapping has significantly assisted implementation where it has been undertaken. The Review also found particular advantages in coordinating this work at the regional rather than district level.
 - The inclusion of identified nationally significant surf breaks is new to the NZCPS 2010. Some sectors continue to question why surf breaks are identified specifically in the NZCPS. However, the Review found that the precise identification of surf breaks of national importance has reduced disputes around their identification, raised their profile as a national resource and resulted in councils investing in facilities to support their use.
 - The Board of Inquiry noted that public access to the coast is highly valued by New Zealanders, and Policies 18–20 support more strategic planning for coastal open spaces, including public access. The Review found that these policies support councils that choose to address the often contentious issue of public access to the coast through their RMA documents and decision-making.
 - No significant issues were identified in relation to the implementation of Policies 17 (Historic heritage identification and protection) and 12 (Harmful aquatic organisms).

*Focus of future work**Supporting strategic and integrated planning*

35. The clear interrelationships between the directive policies and the balance of the NZCPS 2010 require careful consideration, particularly in relation to integrated management and strategic planning for use and development. Therefore, any further assessment should focus on strategic and integrated management rather than a particular sector.
36. Better use should be made of non-statutory processes as a catalyst for further work involving iwi and stakeholders, including agencies with different statutory responsibilities, for example by building on strategic spatial planning approaches such as those used in the Hauraki Gulf process.

Directive policies

37. Some participants in the Review considered that the directive policies in the NZCPS 2010 relating to outstanding areas and biodiversity should be reviewed following *King Salmon*. The Review found that any further assessment of the NZCPS 2010 in relation to the directive policies (particularly Policies 13 and 15) should include a detailed audit of on the ground implementation work that has

been conducted to date.

38. In relation to Policy 11, it is particularly important that filling information gaps and sharing information between agencies are prioritised.
39. There is wide interest in the directive policies. A stakeholder process could be used to consider sharply contrasting views on these policies, and to explore the potential for consensus.

Responding to uneven implementation

40. In relation to regional and district planning approaches, a more concentrated focus of resources and support in areas where there are particular challenges could be considered (e.g. in Marlborough).
41. The promotion of more direction through region-wide (rather than district by district) identification, mapping and assessment, particularly in relation to the extent and characteristics of the coastal environment, would be beneficial.

Work on implementation guidance and methodologies

42. DOC's guidance to support the NZCPS 2010 should be completed and opportunities to share implementation experiences should be increased. Ways to better support coordinated implementation of the NZCPS 2010 and other national policy statements should also be considered (particularly in relation to the NPS – Freshwater Management and the NPS on Urban Development Capacity).
43. Prioritising work on developing consistent assessment methodologies would be valuable, particularly methods for identifying outstanding natural character, natural landscapes and natural features. Consistent methodologies would also greatly assist with the mapping and identification of the coastal environment, and coastal hazard risk assessments.

Monitoring and reporting

44. An approach to respond to the remaining provisions of Policy 28 needs to be developed, including the gathering of on the ground information and improved monitoring and reporting. This work would also address reporting on the effectiveness of the NZCPS 2010 in achieving the purpose of the RMA, including:
 - developing a nationally consistent monitoring and reporting programme (Policy 28(a)); and
 - gathering information that will assist in providing a national perspective on coastal resource management trends, emerging issues and outcomes (Policy 28(b)).

Introduction

45. This report (Overview Report) summarises the findings of the effectiveness review for the New Zealand Coastal Policy Statement (NZCPS) 2010 (the Review). It is accompanied by *Review of the effect of the New Zealand Coastal Policy Statement 2010 on RMA decision-making: Part 2 – Background Information*.
46. The NZCPS is prepared under the Resource Management Act 1991 (RMA). Its purpose is to state policies in order to achieve the RMA’s goals in relation to the coastal environment of New Zealand.¹⁰ It is the only mandatory national policy statement (NPS) under the RMA.
47. The existence of a policy statement that is specific to the coastal environment reflects the importance of the coast to New Zealanders and its particular management challenges, including a high concentration of nationally significant uses and values. Tangata whenua also have a deep relationship with the coast.
48. Multiple activities occur in the coastal environment, some of which have the potential to conflict. Important uses that operate in the marine environment include transport, fishing, tourism and aquaculture. Other activities covered by NZCPS policies include transport infrastructure, telecommunications, settlements for housing and papakainga, and access facilities such as wharves and moorings. The coastal marine area, which is part of the coastal environment, is public not private space.
49. The Minister of Conservation is responsible for preparing and recommending the NZCPS as part of the coastal management regime under the RMA. The Minister of Conservation’s other responsibilities in relation to coastal management include approving regional coastal plans, and monitoring the effect and implementation of NZCPSs.
50. The current NZCPS came into effect on 3 December 2010, replacing the NZCPS 1994, and followed a Board of Inquiry process.¹¹ The NZCPS 2010 refocused some of the policy direction from the 1994 document to make it more directive around enabling appropriate use and development, while also protecting other identified natural values. It also included direction on some new issues, such as surf breaks and climate change. The NZCPS covers a wide range of issues over a large part of New Zealand. In recommending the new document for approval, the Minister of Conservation said:

In summary I would expect the new NZCPS to support progressive improvement rather than radical change in economic, social and environmental outcomes from coastal resource management. Change would occur gradually, over a period of years, as the statement is given effect in plans and considered where relevant in consent decisions. Outcomes would be influenced significantly by community aspirations expressed through plan processes, and by differences in the relative importance of particular issues between regions and districts. Given the wide range of economic activities in the coastal environment, costs and benefits would not be concentrated in particular sectors, although policy is

¹⁰ Resource Management Act 1991, s 56.

¹¹ A total of 539 submissions were received of which 175 were heard by the Board of Inquiry.

*clearly of particular relevance to activities focused on the coast such as aquaculture, ports and coastal residential property development.*¹²

51. Policy 28 of the NZCPS 2010 requires the Minister of Conservation to ‘assess the effect of the NZCPS on regional policy statements, plans and resource consents, and other decision making’ within 6 years of it coming into effect. Accordingly, the Department of Conservation (DOC) has undertaken this review.

¹² Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010, para 31.

Scope and methodology of the Review

52. Policy 28(1)(c) of the NZCPS 2010 requires the Minister of Conservation to assess the effect of the NZCPS on regional policy statements, plans, resource consents, and other decision-making within 6 years of it coming into effect. Accordingly, the Department of Conservation (DOC) has undertaken a review of the effect of the NZCPS on RMA decision-making. The Section 32 report¹³ that was prepared as the NZCPS 2010 was being finalised in 2010 has informed the Review.
53. The Review was completed between August 2016 and April 2017. The scope of the Review and the methodology used are described in detail in *Part 2 – Background information*¹⁴ and summarised in Figure 1 below, noting that:
- In the time available, it was not possible to review the contents of all regional policy statements (RPSs) and plans. Direct engagement with councils and the responses to the local government survey provided information on implementation progress.¹⁵
 - The Review did not include the collection of data or the establishment of a nationally consistent monitoring and reporting programme (both of which are anticipated by other parts of Policy 28). Decisions on how Policy 28 will be fully implemented, including on the ground results, are yet to be made. Some participants in the Review, including some attendees at the ten Sector Group Workshops, commented that an on the ground assessment was necessary to fully test the effectiveness of the NZCPS 2010 and suggested measures that could be monitored.¹⁶ However, this Review does recognise that both on the ground information and improved monitoring and reporting would be useful, and consequently identifies these areas as a priority for further work.
 - Some iwi were contacted as part of the case studies¹⁷ and invited to participate in the Review. Those who participated provided comment on the particular case study and their experiences with the RMA and the NZCPS 2010 in particular. In addition, the NZCPS 2010 was discussed directly with Te Rūnanga o Ngāi Tahu. Most interviewees were, or had been, the resource management representative of their respective iwi and/or hapu. The timeframe required that the Review gather representative information rather than consult with all stakeholders and iwi. This limitation is acknowledged and means that further and ongoing discussion with tangata whenua will be needed in the future.
54. A review of the implications for planning practice of the King Salmon decision was commissioned and is provided in Part 2 – Background information.¹⁸ Further information about the case is also provided.¹⁹

¹³ Part 2M: NZCPS 2010 – Summary of evaluation under section 32 of the RMA (October 2010).

¹⁴ Part 2A: Review methodology.

¹⁵ Part 2J: Local government survey and Part 2K: Councils surveyed.

¹⁶ Part 2C: Effectiveness review of the NZCPS – Sector Group Workshops.

¹⁷ Part 2G: Case studies.

¹⁸ Part 2B: Review of implications for planning practice of the Supreme Court *King Salmon* decision and its impact on the interpretation of the New Zealand coastal Policy Statement.

¹⁹ Part 2I: *Environmental Defence Society v New Zealand King Salmon* – Further information.

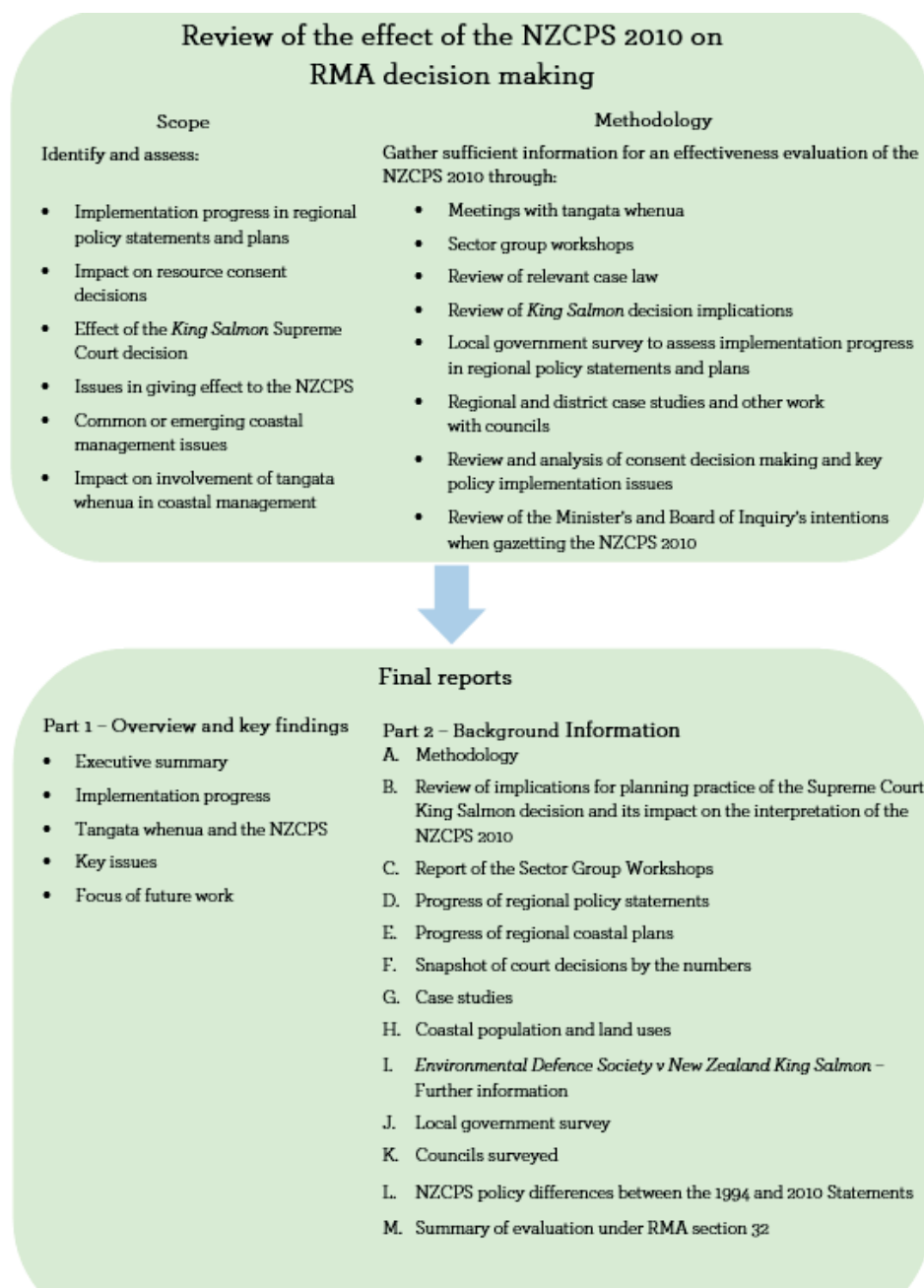


Figure 1: Scope and methodology of the effectiveness review of the NZCPS 2010

Background

Replacing the NZCPS 1994

55. In recommending a revised NZCPS for gazettal in 2010, the Minister of Conservation noted that the NZCPS 1994 had provided high-level policy guidance but did ‘not provide adequate direction for decision makers about proposed activities in the coastal environment’.²⁰ The Minister further noted:

There are significant deficiencies in coastal resource management, regarding integrated management across administrative boundaries; planning for subdivision and development; protection of open space and recreation values; maintenance of public access; maintenance of water quality; management of coastal hazard risks; and recognition of Māori values and interests. There is a general deficit in strategic and spatial planning, including for future infrastructure needs and use of renewable energy sources in the coastal environment.

56. The Minister accepted most of the Board’s recommendations but made some amendments to the Board’s proposed wording to ensure that the NZCPS did not ‘cross the line from effective policy direction to excessive prescription’ and to give ‘appropriate relative weight and attention to protecting natural values and allowing for economic use and development’.²¹ The Minister stated that she expected the NZCPS 2010 to provide greater certainty for resource users about where development may occur. The intention was for important values to be identified in plans rather than through the resource consent processes, which incur a greater cost to applicants.²²
57. The key changes from the NZCPS 1994 are shown in *Part 2 – Background information*²³.

Environmental Defence Society v New Zealand King Salmon

58. A review of the effect of the NZCPS 2010 on RMA decision-making quickly turns to the implications of the Supreme Court’s decision on *King Salmon* both for the NZCPS itself and RMA decision-making in general.
59. *King Salmon* was concerned with an application by New Zealand King Salmon Ltd for a change to the Marlborough Sounds Resource Management Plan to allow consent applications to establish a new salmon farm in western Port Gore in the outer Marlborough Sounds. The plan change for Port Gore was approved by a Board of Inquiry appointed by the Minister of Conservation. Although the Board found that the proposed farm would not give effect to Policies 13 (Preservation of

²⁰ Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010, para 19.

²¹ Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010, para 21.

²² Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010.

²³ Part 2L: NZCPS policy differences between the 1994 and 2010 Statements.

natural character) and 15 (Natural features and natural landscapes) of the NZCPS 2010, it approved the plan change, considering that it would give effect to the NZCPS 2010 as a whole and applying the overall broad judgment required under Part 2 of the RMA.

60. That decision was overturned by the Supreme Court, which held that:
- ‘Avoid’ in Policies 13 and 15 means ‘do not allow’
 - Policies 8 (Aquaculture), 13 and 15 are not inconsistent and do not pull in different directions when read properly
 - The meaning of appropriate and inappropriate in Policies 8, 13 and 15 depends on what the policy is directing
 - When determining whether a plan change gives effect to the NZCPS, it is only permissible to consider RMA Part 2 in limited circumstances.
61. *King Salmon* has now been referred to in numerous Board of Inquiry and court decisions, and is widely described as a ‘landmark’ decision. It has had significant implications for wider resource management practice and law, and implementation of the NZCPS 2010 in particular. *King Salmon* featured prominently in the Review.

Implementation progress

62. Progress on the following aspects of NZCPS 2010 implementation were considered in the Review:

- Regional policy statements and plans
- Resource consents
- Court decisions
- Implementation support and guidance

Regional policy statements and plans

63. The RMA requires that regional policy statements and plans must ‘give effect to the NZCPS’. Thus, these must be reviewed and amended to give effect to the NZCPS ‘as soon as practicable’.²⁴ Council-led and private plan changes are also required to give effect to the NZCPS.

64. Assessing council progress in giving effect to the NZCPS in policy statements and plans is not straightforward because:

- Some councils undertake ‘rolling reviews’ rather than one-off reviews of these documents.
- Regional and district plans are frequently changed through discrete one-off plan changes led by councils and/or private interests.
- Some NZCPS 2010 provisions do not significantly change the policy direction from the NZCPS 1994 and so simply counting the number of documents that have become operative since December 2010 does not necessarily indicate the extent to which NZCPS 2010 policy is in effect on the ground.

65. A review of the progress of policy statements and plans through the Schedule 1 process indicates that implementation of the NZCPS 2010 has substantially progressed in some regions and districts and is ongoing elsewhere. However, progress is uneven. RPSs are most advanced, which is appropriate given the plans must give effect to the RPSs which, in turn, must give effect to the NZCPS 2010. Progress on new regional coastal plans and district plans is slower. The progress in RPS and regional coastal plan development is set out in *Part 2 – Background information*^{25 26} and summarised in Tables 1 and 2 below. One-off changes to RPSs or plans are not included.

²⁴ Resource Management Act, s55 (Local authority recognition of national policy statements).

²⁵ Part 2D: Progress of regional policy statements.

²⁶ Part 2E: Progress of regional coastal plans.

Table 1: Regional policy statement progress

Category	Number of councils
Operative regional policy statements changed since 2010 to give effect to the NZCPS 2010	1
Regional policy statements notified prior to and made operative since the NZCPS 2010	3
Regional policy statements notified since the NZCPS 2010	8
Pre-statutory draft regional policy statements released for public comment since 2010	1
Regional policy statements made operative prior to the NZCPS 2010 with no proposed or draft regional policy statements notified or released since	4

Table 2: Regional coastal plan progress

Category	Number of councils
Regional coastal plans notified since 2010	7
Regional coastal plans notified before 2010 and approved by the Minister of Conservation after 2010	1
Regional coastal plans under review with published intended dates for notification	3
Long-term plan or annual plan commitment to undertake a review of the regional coastal plan	2
Proposed and operative regional coastal plans pre-dating the NZCPS 2010 where no date for notification of a review has been stated in a long-term plan or annual plan (in most cases preliminary work on a review has commenced)	5

66. Progress on giving effect to the NZCPS 2010 through all regional plans other than regional coastal plans (e.g. land and water plans extending into the coastal environment) and district plans has not been specifically assessed and evaluated. Responses to this question via the local government survey completed as part of the Review indicate that a major portion of councils have made progress. Of the 28 responses from territorial authorities, 18 were either in progress or had completed giving effect to the NZCPS 2010.
67. Policy 29 of the NZCPS 2010 requires councils to amend regional coastal plans to remove Restricted Coastal Activities, which under the NZCPS 1994 had required particular procedures and ministerial approval. Councils have now completed this step.

Resource consents

68. Decision makers on resource consents (and designations) are required to ‘have regard’ to the NZCPS 2010.
69. Assessment of the effectiveness of the NZCPS 2010 through the consideration of resource consents is difficult. The Review did not find any evidence that decisions on resource consents are not having regard to the NZCPS 2010. Effective implementation of the NZCPS 2010 in higher-order plans is likely to be an important factor in achieving effective implementation through consents, particularly given the effect of *King Salmon* on the weight that is given to statutory documents.
70. To assess the indirect effects of the NZCPS 2010, the Review considered:
- Whether there have been discernible changes in the number of applications for coastal permits, their location and their outcome.
 - What impact the Supreme Court’s *King Salmon* decision for resource consent decision-making has in the coastal environment.
71. The biannual Ministry for the Environment RMA national monitoring survey provides information on resource consents in the coastal environment²⁷.
72. The 2014/15 national monitoring report found that the 17 regional or unitary councils processed 1586 coastal permit applications in that year. Most applications for coastal permits have been approved (1582). This approval rate is similar to other consent categories including land use, subdivision, discharge and water permits. The majority of the 1580 coastal consent applications for 2014/15 were concentrated in three regions (Marlborough (600), Waikato (308) and Northland (222)). This indicates that some parts of New Zealand are facing more intense and complex coastal issues than others (an issue discussed further below).
73. As noted above, *King Salmon* was concerned with an application for a private plan change. However, the decision’s implications for consent decision-making has been considered through a series of court decisions on resource consent applications since 2014 and has recently been considered by the High Court in *R J Davidson Trust v Marlborough District Council*.²⁸
74. In *R J Davidson*, the High Court found that the RMA’s purpose and principles (Part 2 of the RMA) should only be considered with respect to an individual consent application in limited circumstances, such as invalidity and incomplete coverage. Similarly, specific consideration of higher-order policy documents (like the NZCPS and RPSs) is not required except in the same limited circumstances, as plans (district or regional) give effect to them.

²⁷ Ministry for the Environment (2016). National Monitoring System for 2014/15. Ministry for the Environment, Wellington.

²⁸ *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

75. The High Court’s decision on *R J Davidson* is significant for resource management decision-making beyond implementation of the NZCPS 2010. The High Court decision is currently before the Court of Appeal.

Court decisions

76. The NZCPS 2010 has been considered in numerous decisions of Boards of Inquiry, the Environment Court and the superior courts since coming into effect. References to the NZCPS in these decisions range from a passing mention through to substantive consideration of the document and its place in resource management decision-making.
77. The Review considered decisions that referred to the NZCPS 2010.²⁹ The analysis included both the number and type of decisions and substantive comments on NZCPS 2010 provisions. The results of this study are provided in *Part 2 - Background information*.³⁰
78. The analysis did not cover decisions that were the result of Environment Court appeals resolved through mediation, which there are a number of, including the Northland RPS appeals.
79. The review of decisions showed that:
- 35 cases have considered the NZCPS 2010 substantively, while a further 45 have considered it to a lesser degree, and a further 122 have included mention of the NZCPS.
 - 25 of the 35 substantive cases were Environment Court decisions. The NZCPS 2010 has been considered substantively seven times by the higher courts in proceedings relating to four different matters: the *King Salmon*³¹ decisions (one in the High Court and two in the Supreme Court), the *Man O’War*³² decisions (one in the High Court and one in the Court of Appeal), the *Transpower*³³ decision (High Court) and the *R J Davidson Family Trust*³⁴ decision (High Court).
 - There was a spike in substantive decisions in 2014 (which included *King Salmon*), 3 years after the NZCPS took effect.
 - 22 of the 35 substantive decisions have involved ‘consent matters’ (including designations because of the common requirement to have regard to the NZCPS). However, ‘plan matters’ account for 5 of the 7 substantive decisions from the higher courts.

²⁹ Decisions dated between 3 December 2010 and 31 February 2017 are included.

³⁰ Part 2F: New Zealand Coastal Policy Statement 2010 – A snapshot of court decisions by the numbers.

³¹ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2013] NZHC 1; *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38; *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40.

³² *Man O’War Station Ltd v Auckland Council* [2015] NZHC 767; *Man O’War Station Ltd v Auckland Council* [2017] NZCA 24.

³³ *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281.

³⁴ *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

- 21 of the 35 substantive decisions have involved unitary authorities, split evenly between Auckland (10) and Marlborough (9), with the remaining two in Tasman District.
 - Of the substantive unitary authority cases, 13 were concerned with consent matters and 8 were concerned with plan matters.
 - The regional council substantive decisions are also geographically concentrated (eight cases across four councils, including two cases involving Bay of Plenty Regional Council, two cases involving Hawke's Bay Regional Council, three cases involving Northland Regional Council and one case involving Waikato Regional Council).
 - 32 of the 35 substantive decisions concerned regional (rather than district) matters, and very few (3 of the 35) involved territorial authorities. None of the cases involving unitary authorities concerned their territorial authority functions.
80. The most commonly mentioned NZCPS policies in the substantive decisions were:³⁵
- Policy 13 – Preservation of natural character (24 mentions)
 - Policy 15 – Natural features and natural landscapes (22 mentions)
 - Policy 6 – Activities in the coastal environment (20 mentions)
81. The least commonly mentioned NZCPS policies in the substantive decisions were:
- Policy 10 – Reclamation and de-reclamation (0 mentions)
 - Policy 26 – Natural defences against coastal hazards (0 mentions)
 - Policy 28 – Monitoring and reviewing the effectiveness of the NZCPS (0 mentions)

Implementation support and guidance

82. DOC led a programme of support and guidance for councils immediately following gazettal of the NZCPS 2010. A steering group formed with Local Government New Zealand guided this work and an Implementation Plan was prepared, despite no additional funding being specifically allocated for implementation support on gazettal.
83. The programme involved active engagement with the Local Government New Zealand convened Coastal Special Interest Group, and regional workshops with district and regional councils on the NZCPS 2010 provisions and implementation.
84. The resources for this aspect of the implementation programme were reduced after

³⁵ This does not mean that the subject matter of each policy was substantively discussed each time it was mentioned even in the Category A cases. Some decisions identified significant numbers of NZCPS objectives and policies, e.g. *East Otago Taiapure Management Committee v Otago Regional Council* [2013] NZEnvC 001.

2013 in response to increasing priorities in other areas, particularly the Aquaculture Programme that was developed as part of the Government’s Business Growth Agenda.³⁶

85. DOC has continued to be involved in statutory and pre-statutory processes involving the NZCPS 2010 (particularly RPS and regional coastal plan development), including involvement in pre-notifications and making submissions on notified documents and some resource consent applications. Decisions following the *King Salmon* case have been regularly reviewed.
86. Alongside this work, DOC has prepared guidance material to support implementation, which is available on its website³⁷. However, not all policies are covered by the available guidance and it needs to be updated to take into account the findings in *King Salmon* and subsequent case law.
87. As it currently stands, the guidance on NZCPS implementation is incomplete. Feedback through the Review illustrated that councils and others would like this guidance to be completed with priority given to coastal hazard policies. Specific guidance on matters relevant to both the NZCPS 2010 and other national instruments (e.g. NPS – Freshwater Management with respect to estuaries) was also identified as a priority.
88. The Ministry for the Environment is also currently updating the national guidance on coastal hazards and climate change.

³⁶ Ministry of Building, Innovation and Employment (2015). *Building natural resources*. Ministry of Building, Innovation and Employment, Wellington. www.mbie.govt.nz/info-services/business/business-growth-agenda/pdf-and-image-library/towards-2025/BGA%20Natural%20Resources%20Chapter.pdf

³⁷ <http://www.doc.govt.nz/about-us/science-publications/conservation-publications/marine-and-coastal/new-zealand-coastal-policy-statement/policy-statement-and-guidance/>

Tangata whenua and the NZCPS

89. The NZCPS 2010 directs that Treaty principles should be taken account of by consulting and involving tangata whenua, referring to iwi management plans, recognising customary knowledge, and identifying and protecting sites and resources of particular importance to Māori.
90. This policy direction continues the direction that was established in the 1994 document but contains more detail on the actions to be taken by councils. The 2010 policy is also stronger in that it requires councils to provide opportunities for iwi to exercise kaitiakitanga rather than consider it a part of council plan making.
91. A number of councils said that they involved tangata whenua and took the Treaty of Waitangi into account not as a direct response to the NZCPS but because it is a requirement of the RMA.
92. Similarly, tangata whenua said that their involvement in RMA decision-making is not driven by the NZCPS but by their strong desire to be involved in decision-making in the coastal environment.
93. Tangata whenua were supportive of the policy intent in the NZCPS 2010 in relation to tangata whenua. Te Rūnanga o Ngāi Tahu staff said that they used the policies in the NZCPS to support their positions both inside and outside the coastal environment. In a number of cases, iwi were able to use policies in the NZCPS to support their arguments in planning processes.^{38 39}
94. The Review found that:
 - Tangata whenua have a key relationship with the coast and a strong desire to be involved in decision-making in the coastal environment, including any changes to key policy documents such as the NZCPS. They see the NZCPS 2010 as supporting their strong interests in decision-making in coastal environment matters.
 - The NZCPS 2010 urges a good practice approach to involving tangata whenua but strong relationships between councils and iwi are critical to effective implementation. Both councils and iwi reported that the effectiveness of the approach set out in the NZCPS is, to a large extent, dependent on existing relationships between councils and iwi, and on particular individuals who are able to drive through good practice. Some iwi commented that they worked hard to have good relationships with the local council and that this took effort by both parties.
 - There can be financial constraints on iwi involvement in RMA and NZCPS decision-making, particularly for ‘non settled’ iwi. Tangata whenua noted that they often have to meet the costs of engaging with councils or other applicants, which creates challenges for some iwi, particularly those that are still negotiating settlement of historical Treaty of Waitangi claims. Some councils provide financial support for iwi to participate in RMA decision-

³⁸ Part 2G, Case study 2: Integrated management – Tauranga Harbour

³⁹ Part 2G, Case study 3: Iwi values – Auckland’s unitary plan process

making processes.

- Also relevant are the recent changes to the RMA under the Resource Legislation Amendment Act 2017, which include new tools and processes to facilitate improved working relationships between iwi and councils, and to engage Māori participation in RMA processes.

Key issues identified in the Review

95. This section discusses two key issues that were identified during the course of the Review:
- implementation and resourcing; and
 - the relationship between the NZCPS 2010 and other national instruments.
96. It also discusses key issues that have arisen with regard to four broad groupings of the policies in the NZCPS 2010:
- Strategic planning, and provisions for use, development and protection
 - Policies 7 (Strategic planning) and 4 (Integration)
 - Policies 13 (Preservation of natural character) and 15 (Natural features and natural landscapes)
 - Policy 11 (Indigenous biological diversity)
 - Policies 6 (Activities in the coastal environment), 8 (Aquaculture) and 9 (Ports) – the use and development policies
 - Policy 1 (Extent and characteristics of the coastal environment)
 - Water quality
 - Policies 21 (Enhancement of water quality), 22 (Sedimentation) and 23 (Discharge of contaminants)
 - Coastal hazards
 - Policies 24-27 relating to coastal hazards and Policy 3 (Precautionary approach)
 - Other
 - Policy 12 (Harmful aquatic organisms)
 - Policy 14 (Restoration of natural character)
 - Policy 17 (Historic heritage identification and protection)
 - Policies 18 (Public open space), 19 (Walking access) and 20 (Vehicle access)
 - Policy 16 (Surf breaks of national significance)
97. The most relevant NZCPS objectives are identified for each of the above policy groupings. However, the objectives are not confined to single issues, reaching across policy areas.
98. Policy 2 (The Treaty of Waitangi, tangata whenua and Māori) and Objective 3 matters are addressed in the sections entitled ‘Tangata whenua and the NZCPS’ in this report and *Part 2 – Background information*. In addition, issues raised by iwi are

addressed in the discussion of specific policies.

Implementation and resourcing issues

99. The Review found that a wide range of resourcing issues are impacting on the implementation of the NZCPS 2010 by councils. The *King Salmon* decision has required a focus on the wording of regional policy statements and plans in particular. Review findings include:
- *Some councils are poorly resourced for the number and complexity of coastal resource management issues faced in their region/district.* The NZCPS 2010 places significant emphasis on up-front identification of values and planning. All councils reported that finding the resources for this is challenging, but this challenge is particularly acute for smaller councils. Some of New Zealand's smallest councils by ratepayer base have complex coastlines and high-profile resource management issues.
 - *Demanding information requirements.* Even for well-resourced councils, the information requirements are extensive and expensive, and the planning processes that are required to reflect that information in planning documents are contentious. Particular note was made of the expense involved in collecting information on the offshore and remote parts of the marine environment, and for landscape and natural character assessments.
 - *An increased focus on resolving issues at the plan stage rather than the consent stage can take significant time and resources.* *King Salmon* has focused all participants in Schedule 1 processes on the precise wording of policy statements and plans. If an overall broad judgment in Part 2 is not to be applied, policy statements and plans become more important, as confirmed by recent case law. Councils reported that resolving issues at the plan level can take significant time and resources.
 - *Competing priorities of other national direction.* Councils reported issues around meeting implementation requirements for the NZCPS 2010 as well as other national policy statements (particular note was made of the NPS – Freshwater Management 2014 and, looking ahead, the NPS on Urban Development Capacity 2016).
 - *Lower priority for coastal issues for some regions/districts.* Some councils noted that the coastal resource management issues they face are lower priority than other issues for their particular regions/districts and so coastal planning is a lower priority for these councils.
 - *Some coastal resource management issues are inherently complex.* Some councils reported that they are grappling with particularly complex and contentious issues that are taking significant time and resources to address. Aquaculture was cited as an example.
 - *Insufficient implementation support and guidance.* Councils cited the work by the Ministry for the Environment on implementation of the

NPS – Freshwater Management as a good example of implementation support. By contrast, councils noted that central government guidance on the NZCPS 2010 is incomplete and not sufficiently detailed for local decision-makers. Some iwi also raised this concern. The lack of guidance on the coastal hazard policies was of particular concern to councils.

- *Quickly developing case law.* Cases continue to consider the implications of *King Salmon* beyond the plan change setting of the original decision in 2014. This ongoing development of case law has had implications (both in terms of the timing of new initiatives and the costs of implementing them) for councils as they adapt to changing circumstances while preparing policy statements and plans.

Relationships with other national instruments

100. The NZCPS 2010 now sits alongside four other NPSs that are in effect, three of which have been gazetted since 2010.⁴⁰ The Review identified that:

- The NZCPS 2010 differs from other national direction instruments in that its scope is a part of New Zealand (the coastal environment) rather than a particular issue. This means that issues about the relationship between national direction instruments are common. There is no central government guidance on the relationship between the NZCPS 2010 and other NPSs.
- The *King Salmon* decision raises a potential issue of inconsistent ‘directive policies’ in different national instruments. An example given in the course of the Review was a potential inconsistency between the NPS – Electricity Transmission and Policies 13 and 15 of the NZCPS 2010.
- Potential gaps (and some overlaps) between the NZCPS 2010 and the NPS – Freshwater Management were identified, particularly in relation to the effects of land use on coastal water quality and biological diversity. The lack of specific provisions for estuaries in either the NZCPS 2010 or the NPS – Freshwater Management was specifically raised in the Review.

101. The NZCPS 2010 is currently the only national direction instrument that specifically focuses on the coast. With the advent of more national direction, the relationship between any new instruments and the NZCPS 2010 will require careful consideration.

102. A proposed National Environmental Standard (NES): Marine Aquaculture was released for public comment on 14th June 2017. An NES for plantation forestry is in development.

⁴⁰ Other NPSs that are in force include Electricity Transmission (2008), Renewable Electricity Generation (2011), Freshwater Management (2014) and Urban Development Capacity (2016).

Strategic planning, and provisions for use, development and protection

Policies 4 (Integration) and 7 (Strategic Planning)

103. Policies 4 and 7 together direct councils to ‘consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment’. They anticipate councils setting thresholds (including zones, standards or targets) and specifying acceptable limits for change where practicable. Policies 4 and 7 are overarching and closely related to the implementation of all other NZCPS 2010 provisions. NZCPS 2010 Objectives 2 and 6 are particularly relevant to these policies.
104. The focus of the NZCPS 2010 on ‘up-front’ coastal planning is an intentional change in policy direction. While it is not novel, the strong focus on strategic planning in the NZCPS is a clear national statement of its importance and potential. Direction on spatial allocation and use of the coast in policies and plans is expected to assist councils in managing adverse cumulative effects and the incremental loss of important coastal values. Effective spatial planning can also support provision of the development of strategically important facilities and services.
105. At regional and local levels the Review identified examples of integrated and strategic approaches to coastal planning, including those detailed in case studies on integrated management.^{41 42 43}
106. While strongly worded in terms of the need for a strategic approach, NZCPS policy is relatively open ended in terms of process, recognising that values and issues vary around New Zealand. The Review found little evidence of limit setting and allocation in the coastal marine area, other than the allocation of maritime space to particular existing uses such as aquaculture, marinas, ports, moorings, and other infrastructure and facilities. First in first served continues to dominate decision-making on the allocation of coastal marine space.
107. In particular, the Review found that:
 - There are some examples of strategic and integrated (including spatial) planning leading resource management plans. For those councils that have progressed statutory documents, the combined mapping and associated provisions have generally achieved better policy guidance on activities. For example, the approach in Bay of Plenty involves identifying activities that are ‘generally not appropriate’, ‘possible’ and ‘generally appropriate’ in terms of their effects on the ‘qualities and characteristics’ that make a coastal area outstanding for its natural character, natural features or natural landscape. The policies associated with these provisions provide for the consideration of cumulative effects and guidance on the types of conditions that should be imposed by decision makers if consent is granted for an activity. Similar approaches have also been advanced in other places, such as Auckland and Northland. Processes that focus on single uses or a class of uses are now less common.

⁴¹ Part 2G, Case study 1: Integrated management – Bay of Plenty Regional Council.

⁴² Part 2G, Case study 2: Integrated management – Tauranga Harbour.

⁴³ Part 2G, Case study 5: Giving effect to Policies 13 and 15 – Auckland Unitary Plan and Northland Regional Policy Statement

- Some strategic/spatial planning processes are taking place outside the RMA Schedule 1 process. An example of this is the Hauraki Gulf / Tikapa Moana Marine Spatial Plan, which was developed as part of the Sea Change – Tai Timu Tai Pari process.⁴⁴ This process involves iwi and a wide range of stakeholders, and considers all uses and values within the Gulf. The process to implement the Spatial Plan recommendations is still being determined.
- Some participants in the Review reported that councils are not always making up-front planning a priority despite it being critical for the effective provision for use and development.
- Managing cumulative effects can be particularly challenging (and expensive) at the resource consent stage in the absence of a robust, wider strategic framework.
- Where strategic planning has not been progressed, there appears to be an increased tension about how to resolve issues raised by Policies 11, 13 and 15, particularly post the *King Salmon* decision (e.g. the management of marine activities, particularly aquaculture, in Marlborough). In the absence of an agreed regional or district strategic direction, resolution of these tensions can be particularly challenging.
- Strategic planning with a spatial focus is resource intensive, which has impacted on the uptake of strategic planning exercises. Experience shows that it can be time consuming and hard to progress in the face of more immediate priorities (at national, regional and district levels).
- Strategic planning processes have also grappled with the inherent tension between certainty (for resource users in the coastal environment as well as people who are concerned about the enduring protection of high values) and the flexibility that is required to allow for new opportunities and priorities. Some pressures from new and emerging activities that were anticipated in 2010 have not eventuated while others continue to be present.

108. Participants noted that further guidance about the policies, resources and opportunities to share experiences with strategic planning could improve the effectiveness of the NZCPS 2010 in the future.

Policies 13 (Preservation of natural character) and 15 (Natural features and natural landscapes)

109. Policies 13 and 15 direct the avoidance of adverse effects on outstanding areas among other things. These policies further direct the assessment and identification of outstanding areas with regard to the matters listed, and that statutory plans include direction where necessary. NZCPS Objectives 2 and 6 are particularly relevant to these policies.

110. The concept of ‘outstanding natural character’ was new to the NZCPS 2010. The ‘outstanding’ qualifier with respect to outstanding natural features and landscapes is also given in section 6(b) of the RMA. NZCPS 2010 policy focuses the most rigorous policy requirements to the areas with outstanding values. Cascading

⁴⁴ Sea Change – Tai Timu Tai Pari (Hauraki Gulf Marine Spatial Plan) (2017).

policy requirements open additional options (remedy and mitigate adverse effects) where areas have lesser value.

111. In recommending the NZCPS for approval, the Minister of Conservation said:

I would expect the implementation of the NZCPS 2010 to result in council plans that more clearly identify where development opportunities are likely to be constrained to protect areas of the coastal environment with special landscape, natural or cultural value. These areas would have to be identified through robust methodologies and consultation processes.⁴⁵

112. As noted above, *King Salmon* clarified that with respect to these policies:

- ‘avoid’ means ‘do not allow’ rather than ‘try to avoid’; and
- the meaning of appropriate/inappropriate depends on what the policy is directing.

113. Subsequent case law has clarified that:

- an assessments of values should be undertaken at a regional scale;⁴⁶ and
- the assessment is of the values and so should not differ depending on the outcome.⁴⁷

114. The Review found that work within policy statements and plans to give effect to Policies 13 and 15 is ongoing. Some documents now clearly identify outstanding areas, describe their characteristics and values, assess the effects of activities, and set policies for their ongoing management. Councils reported that this work has been challenging and expensive but has resulted in planning documents that provide more certainty. However, some councils have yet to commission work and/or progress reviews of policy statements and plans to give effect to these NZCPS 2010 provisions.

115. The implications of the *King Salmon* decision for Policies 13 and 15 were of significant interest to many review participants. The Review heard very different views on the effectiveness of these policies following *King Salmon*, particularly with regard to whether the balance between these policies and others in the NZCPS 2010 remains appropriate. However, concerns about the lack of nationally consistent and robust methodologies to identify outstanding areas were almost universal.

116. The issue of ‘balance’ was clearly to the fore for the Board of Inquiry on the proposed NZCPS, who reported:

Many submissions commented on the need for balance in the NZCPS. However, that balance was generally perceived and portrayed differently according to the interests of the submitter. We conclude that there are major problems with the current balance applied by decision makers, reflected for example, in the extent of and growth in residential and rural residential development in the coastal environment. As a result the coastal environment does not reflect the ‘sustainable management of natural and physical resources’ which is the purpose of the Act. The NZCPS needs to send a stronger message, a national

⁴⁵ Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010, para 24.

⁴⁶ *Man O’War Station Ltd v Auckland Council* [2017] NZCA 24.

⁴⁷ *Man O’War Station Ltd v Auckland Council* [2017] NZCA 24.

*direction sought by many submissions including a number from district and regional councils.*⁴⁸

117. In recommending the NZCPS 2010 for gazettal, the Minister of Conservation accepted many of the Board’s recommended amendments to the proposed NZCPS, making some amendments:
- ... to ensure that the NZCPS does not cross the line from effective policy direction to excessive prescription, and that it gives appropriate relative weight and attention to protecting natural values and allowing for economic use and development.*⁴⁹
118. During the ten Sector Group Workshops that were held as part of the Review, industry groups expressed a view that they had accepted the ‘balance’ in the NZCPS 2010 prior to the Supreme Court’s *King Salmon* decision. However, the aquaculture and minerals industry groups in particular reported significant concerns with Policies 13 and 15 following *King Salmon*. Specifically, there was a concern that these policies could be read as giving no ability for any activity to be approved regardless of its importance if it has adverse effects on outstanding areas, as such effects must be avoided. Industry groups pointed to ongoing court action as demonstrating uncertainty as a result of the *King Salmon* decision.
119. Some industry representatives expressed further concern that recent court decisions on resource consent applications would mean that restrictive policies in plans that have been produced to give effect to directive NZCPS policies would not be appropriately balanced with reference to the RMA’s purpose and principles. Potential obstacles to obtaining replacement consents for consents that had been issued for a fixed term were specifically raised, particularly the costs of increased uncertainty.
120. During the Aquaculture Sector Group Workshop, industry participants were concerned that there is a particular conflict between the best sites for expansion of aquaculture and outstanding areas, and that it would be costly to resolve issues relating to outstanding values.
121. Industry groups raised some different options to address their issue, including softening the protective directive policies, strengthening the policies enabling development and amending the NZCPS 2010 to make it expressly ‘subject to Part 2 (the purpose and principles)’ beyond the limited circumstances set out by the Supreme Court. They pointed to the fact that the understanding of the applicable law at the time the NZCPS 2010 was gazetted was that giving effect to the NZCPS 2010 in policy statements and plans would require consideration of Part 2 of the RMA.
122. In sharp contrast, environmental groups strongly supported the current wording of Policies 13 and 15, saying that they do not preclude appropriate development in appropriate locations at an appropriate scale. They pointed to the certainty provided by the policies to all those with interests in the coastal environment and questioned how a case-by-case consideration of the Act’s purposes and principles could allow predictable policy setting and implementation. Reflecting on their implementation experience, some councils also expressed this view.

⁴⁸ Board of Inquiry, Volume 1, p. 5.

⁴⁹ Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010.

123. The environmental groups noted the Board of Inquiry’s concerns that a case-by-case ‘balancing approach’ had not achieved sustainable management of natural and physical resources, and that the NZCPS needed to set stronger national direction. They considered it premature to change the NZCPS, on the grounds that time (and guidance) is needed to enable regional policy statements and plans to ‘give effect’ to the NZCPS by identifying areas and particular effects that needed to be avoided rather than simply prescribing ‘avoiding all adverse effects’. They also said that effectiveness monitoring is required before any such changes could be considered. Indicators that could be used to monitor progress were suggested and are detailed in the Sector Group Workshops report⁵⁰, including:
- Degradation of outstanding areas under the ‘Values and characteristics’ approach
 - Extent of sporadic development
 - Extent of consolidation of existing areas in response to development pressures
 - Uptake of marine spatial planning tools
124. For councils, the policy requirement to identify outstanding values was clear and had encouraged them to undertake the necessary survey work to give effect to Policies 13 and 15 of the NZCPS 2010. Some regional councils have undertaken this work in collaboration with district councils.
125. Implementation of the policy direction to ‘avoid’ was an area where councils have made significant progress since *King Salmon* where this was coupled with their strategic planning work. Areas that have been identified as outstanding are regionally important, and there is a high degree of commitment to applying the policy in a way that provides appropriately for use, development and protection. The work by councils has involved identifying the qualities and characteristics that make these areas ‘outstanding’ and developing policy to avoid adverse effects on those qualities and characteristics, rather than the more generic approach of avoiding all adverse effects. Some of the same issues have also arisen with respect to Policy 11.
126. As detailed in the Auckland Unitary Plan and Northland Regional Policy Statement Case Study⁵¹, the Auckland Independent Hearing Panel adopted an approach of considering the appropriateness of objectives and policies by assessing them against the following questions:
- a) What is the relevant environment for the purpose of the particular objective or policy?
 - b) What particular use or activity ought to be enabled in that environment?
 - c) What particular value or values of that environment ought to be protected?
 - d) What kinds of effects of the activities are relevant to such protection of values and which of those effects are adverse in the context of the relevant environment?

⁵⁰ Part 2C: Effectiveness review of the NZCPS - Sector Group Workshops.

⁵¹ Part 2G, Case study 5: Giving effect to Policies 13 and 15 - Auckland Unitary Plan and Northland Regional Policy Statement.

- e) Are the adverse effects to be absolutely avoided or are they to be managed in terms of matters of degree?
 - f) If the adverse effects are to be managed, what are the thresholds or other parameters for appropriate management?
127. Questions of scale and effect were important for a number of other council processes and were often a focus. For some councils, the protection of outstanding areas has been a continuation of the first-generation plan provisions prepared under the NZCPS 1994, with some refinement, and so giving effect to Policies 13 and 15 has not represented a major change. However, for others, where there had been little or no systematic identification of outstanding values in first-generation plans, it represents a bigger change.
 128. More information on the Auckland approach can be found in the examples provided in the Auckland Unitary Plan and Northland Regional Policy Statement Case Study in *Part 2 - Background information*. In these examples, outcomes included the protection of outstanding areas from inappropriate uses, recognition of places where existing uses were not adversely affecting outstanding areas and recognition of earlier planning decisions to consolidate uses in particular areas to avoid sprawling coastal development.
 129. In terms of the question of ‘balance’, a clear issue is the significantly different views of different interests (particularly the aquaculture and environmental sectors) on whether or not some activities with adverse effects on outstanding values should be allowed to occur.
 130. Substantive recommendations on the wording of Policies 13 and 15 or how they are implemented were beyond the scope of the Review. However, the Review did note the depth of some industry concern and the depth of environmental group concern that these policies might be changed. The steady progress of some councils in implementing the policies was observed but the extent of further implementation work that is required is also clear. The implementation issues for Policies 13 and 15 are clearly complex.
 131. The Review found that there are polarised views on whether some activities are so important (or present such significant benefits) that their adverse effects should be able to be remedied or mitigated rather than simply avoided, and who should be responsible for such decisions if a different approach was preferred over current NZCPS 2010 policy. There are also polarised views on whether ‘balancing’ should occur with respect to each decision that is made in consideration of policy statements, plan contents and resource consent applications. The Review found that any further assessment of the NZCPS 2010 policy in relation to the directive policies (particularly Policies 13 and 15) should include a detailed audit of the work that has been completed or is currently underway in implementing the directive policies on the ground (including in policy statements and plans). The Review highlighted the wide interest in these policies, and the clear interrelationships between the directive policies and the balance of the NZCPS 2010, particularly in relation to integrated management and strategic planning for use and development. Therefore, any further assessment should not focus on any single industry. Fundamentally, the scope of the RMA’s purpose and principles to provide for different formulations would need to be carefully considered.
 132. The second key issue relating to the effectiveness of Policies 13 and 15 is the lack of consistent methodology. The focus of the NZCPS 2010 on planning (rather than

consents) requires the identification of important values in policy statements and plans, which itself depends on ‘robust methodologies and consultation processes’.⁵² However, while significant effort has been put into methodological issues at a regional level and some effort has been seen at the national level, the lack of widely accepted consistent methodologies (for both identifying outstanding natural character, natural landscapes and natural features, and assessing any adverse effects on them) was repeatedly and strongly raised as a key concern by participants in the Review.

133. Councils were particularly concerned about the resources that would be required to resolve methodological issues each time a regional or district assessment process begins. Some recent decisions indicate that the courts continue to grapple with methodological issues (such as scale, and the distinction between natural character and landscape) on a case-by-case basis. Review participants reported that ongoing methodological issues represent an increasing cost and uncertainty for all participants in the planning process.
134. The relevance of natural character and outstanding natural features and landscapes to resource management planning extends beyond the coastal environment. However, the NZCPS 2010 requirement to identify outstanding areas and *King Salmon* have focused attention on methodological issues in the coastal environment.
135. The Ministry for the Environment (with help from DOC and the NZ Institute of Landscape Architects) is looking at ways of achieving greater consistency in landscape assessment methods.

Policy 11 (Indigenous biological diversity)

136. Policy directing the avoidance of adverse effects to protect indigenous biodiversity is not new to the NZCPS 2010 as the NZCPS 1994 contained policy directing the avoidance of adverse effects on specified values.⁵³ NZCPS Objectives 1 and 2 are particularly relevant to Policy 11.
137. For the most at-risk species and habitats listed in Policy 11(a), this policy directs protection of indigenous biological diversity in the coastal environment and that

⁵² Minister of Conservation, New Zealand Coastal Policy Statement, Cabinet Paper 2010, EGI (10) 238, October 2010.

⁵³ NZCPS 1994, Policy 1.1.2:

It is a national priority for the preservation of the natural character of the coastal environment to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in that environment by:

- (a) avoiding any actual or potential adverse effects of activities on the following areas or habitats:
 - (i) areas and habitats important to the continued survival of any indigenous species; and (ii) areas containing nationally vulnerable species or nationally outstanding examples of indigenous community types;
- (b) avoiding or remedying any actual or potential adverse effects of activities on the following areas:
 - (i) outstanding or rare indigenous community types within an ecological region or ecological district; (ii) habitat important to regionally endangered or nationally rare species and ecological corridors connecting such areas; and (iii) areas important to migratory species, and to vulnerable stages of common indigenous species, in particular wetlands and estuaries;
- (c) protecting ecosystems which are unique to the coastal environment and vulnerable to modification including estuaries, coastal wetlands, mangroves and dunes and their margins; and
- (d) recognising that any other areas of predominantly indigenous vegetation or habitats of significant indigenous fauna should be disturbed only to the extent reasonably necessary to carry out approved activities.

- adverse effects are to be avoided. For the at-risk species and habitats listed in Policy 11(b), this policy directs that significant adverse effects are to be avoided, and other adverse effects are to be avoided, remedied or mitigated. The section 32 analysis anticipated that Policy 11 would provide continued or enhanced protection for coastal indigenous biodiversity through RMA mechanisms.
138. In contrast to Policies 13 and 15, Policy 11 stipulates priorities for protection within the NZCPS 2010 and fewer methodological issues have arisen. The cases on appeal confirm this difference as, for the large part, they have not involved disputes over whether particular values fell within Policy 11 but rather whether a proposed activity would have an adverse effect and, in some cases, the extent to which such an effect could be adaptively managed.
139. The survey results showed that many councils have taken steps to give effect to Policy 11 in their updated regional policy statements and plans; however, some councils have yet to start this work. In all areas, implementation of the NZCPS 2010 is constrained by a lack of knowledge about the cumulative effects and how to manage them, and the values, especially in offshore and remote areas and for mobile species.
140. Some councils are funding biodiversity investigations to identify indigenous biodiversity in the coastal marine area. This work is more advanced in regions that have particular concentrations of coastal pressures. Marine investigations are costly, but partnerships with other statutory agencies, such as DOC, have helped to reduce these costs (e.g. in Marlborough).
141. The Review found polarised views on the effectiveness of Policy 11 and its implementation. The concerns about ‘balance’ following *King Salmon* that were discussed above in relation to Policies 13 and 15 were also expressed in relation to Policy 11. Many industry groups are finding Policy 11 problematic, especially those that operate within the coastal marine area such as aquaculture. For example, these groups described Policy 11 as more ‘absolute’ than Policies 13 and 15 (as these policies refer to ‘protection from inappropriate development’, which implies that a judgement call will be involved). Industry groups questioned whether Policy 11 had been intended to give ‘absolute protection’ for indigenous biodiversity within the scope of Policy 11(a).
142. In sharp contrast, environmental groups talked about the multiple pressures and threats facing New Zealand’s oceans, coastal marine habitats and wildlife, and cited the recent report *Our Marine Environment 2016*⁵⁴, which was prepared under the Environmental Reporting Act 2015 by the Ministry for the Environment and Statistics New Zealand. Critical issues in the coastal environment relate to the threat of extinction to indigenous birds and mammals, and the degradation of coastal marine habitats and ecosystems, with the most important pressures including excess sedimentation, seabed trawling, marine pests, and nutrient enrichment from upstream land use and freshwater management decisions.

⁵⁴ Ministry for the Environment & Statistics New Zealand (2016). *New Zealand’s Environmental Reporting Series: Our marine environment 2016*. Wellington.

143. Environmental groups expressed concern that Policy 11 is often poorly addressed in coastal plan making and other decision-making because of gaps in information about the values that are present. From their perspective, councils are prioritising other NZCPS matters such as mapping natural character and, if ecological surveys do occur, the near shore and land environments (where most subdivision, use and development occurs) are prioritised over offshore areas. They raised concerns about the lack of understanding of the need to protect areas or habitats for mobile species, such as seabirds and dolphins, as well as the effects of activities that have significant benthic effects, such as trawling and dredging.
144. The restoration of ecosystems and indigenous biodiversity is a significant issue for iwi. Some iwi have been directly involved in restoration projects, enabling a sharing of ideas on management approaches and the incorporation of traditional knowledge into western science research. The NZCPS 2010 policies on biodiversity in particular focus on protection rather than restoration as an activity in and of itself.
145. Particular challenges for the management of indigenous biodiversity in the coastal environment include:
- The need to manage cumulative effects, including setting limits or thresholds for change, and assessing the effect of multiple activities and consents, e.g. direct and indirect discharges.
 - The importance of addressing ‘areas/habitats’ for mobile species, including protected species such as seabirds, whales, dolphins and New Zealand sea lions, information about which is again often limited.
 - The continued adverse impacts on species and habitats by decision-making outside the coastal environment, such as land use and freshwater management decisions impacting on estuaries.
146. The Review found that:
- Although the issues addressed by Policy 11 are not new, this Policy has lifted the profile of indigenous biodiversity in RMA decision-making. Many new policy statements and plans identify significant ecological areas in the coastal environment, to the extent that these areas have been surveyed by councils. Policy 11 implementation has been very limited for offshore and remote areas in terms of mapping due to the cost and difficulty.
 - A lack of information is a major challenge in giving effect to Policy 11, with decision-making on limits often being left until the consenting stage, at which point it can be difficult to satisfactorily answer the many questions that arise. The information gaps include the abundance and distribution of species, the effects of activities on them, and workable limits. Knowledge of offshore and remote areas is also limited.
 - Constraints in the resourcing and capability of councils, and/or tools are significant challenges in this area.

147. Priorities for further work on Policy 11 include implementation guidance, filling information gaps and sharing information between agencies. The strategic planning framework should be considered a catalyst for further work involving iwi and stakeholders, including agencies with different statutory responsibilities and resourcing. The relationship with any further work related to Policies 13 and 15 should also be considered.

Policies 6 (Activities in the coastal environment), 8 (Aquaculture) and 9 (Ports) – the use and development policies

148. A number of important coastal activities depend on the implementation of Policies 6, 8 and 9 and their related objectives, as do other interests with a shared use or interest in how that space is used. Relevant uses include transport infrastructure, tourism, telecommunications, aquaculture, access facilities such as wharves and moorings, settlements for housing and papakainga, and public recreation facilities. Policy 6 sets out the issues to be considered in relation to activities in the coastal environment when developing plans and making decisions, while Policies 8 and 9 specifically identify aquaculture and ports as activities requiring recognition. NZCPS Objectives 2 and 6 are particularly relevant to these policies.
149. All participants in the Review acknowledged that the NZCPS 2010 includes a range of provisions that seek to allow for appropriate subdivision, use and development of the coastal environment. Through the Sector Group Workshops, industry groups commented on the relative weighting of policies, particularly since the *King Salmon* decision, and considered that, in their view, the use and development policies are less directive than others such as 11, 13 and 15. There was concern that in the event of any conflict between the use and development policies and policies such as 11, 13 and 15, use and development would always be relegated.
150. There was also widespread agreement that giving effect to the use and development policies is closely linked to strategic planning through the implementation of Policy 7.
151. There are clear interdependencies between the use and development focused policies and those relating to strategic planning and the management of outstanding values. Focusing particularly on the use and development policies, the Review found that:
- Coastal resource management issues vary significantly around New Zealand. Analysis of consents and case law indicates a particular concentration of use and development applications in Marlborough, and to a lesser extent in the north of New Zealand (Waikato, Auckland and Northland).
 - Marlborough cases have focused on aquaculture and have raised a wide range of issues (navigation, indigenous biodiversity, effects on productivity, natural character, landscape, biosecurity).
 - Substantive decisions concerning ports and port operations have occurred

in Otago and the Bay of Plenty (both on dredging and deposition).⁵⁵

- As noted with respect to Policy 7, strategic planning within the coastal environment is critical for the effective provision for use and development but is not always a priority for councils. It is often challenging and costly to plan positively for use. Some regions have prioritised other issues (e.g. freshwater) over coastal planning and a number of the existing plans are dated. Planning for uses that straddle land and sea, such as ports, requires an integrated approach that considers district and regional functions.
152. There has been substantial work in some second-generation policy statements and plans but there are significant gaps in the progress of regional coastal plans. Key aquaculture regions (by number of consents) are Marlborough, Waikato and Northland. Second-generation RPSs are now operative in Northland, Auckland and Waikato (each of which identifies outstanding areas). Second-generation aquaculture provisions are still to be notified in Marlborough and Waikato, although provisions relating to outstanding areas are included in the recently notified proposed Marlborough Environment Plan.
153. Northland's second-generation regional coastal plan will be notified later in 2017. The draft plan includes the outcomes of an earlier change to the first-generation plan to identify specific areas where aquaculture is appropriate, inappropriate or can be considered on a case-by-case basis. The Auckland Unitary Plan is past the point of challenge in terms of its aquaculture provisions although these focus on existing aquaculture activities rather than new space.
154. Analysis of coastal land use change 1996-2012 finds a significant increase in urban area over that time⁵⁶. Some anticipated pressures from new and emerging activities have not eventuated but there is growing interest in offshore and remote locations. Demand for new uses, such as marine energy generation, is much lower than anticipated.

Policy 1 (Extent and characteristics of the coastal environment)

155. Policy 1 lists matters that are relevant to determining the coastal environment's extent and characteristics, and its management. The Section 32 report is clear that the intent of this policy is to provide a baseline for identification of the coastal environment, including coastal assets and values in plans and decision-making, and to achieve greater national consistency and certainty. All NZCPS objectives are relevant to this policy.
156. A range of methodologies are being used to define the extent of the coastal environment on the ground. Of the examples considered as part of the Review, none adopted the catchment approach that was envisaged by the Board of Inquiry on the proposed NZCPS.⁵⁷

⁵⁵ Part 2G, Case study 4: Port dredging - Otago

⁵⁶ Part 2H: Coastal population and land uses.

⁵⁷ BOI Report and Recommendations to the Minister of Conservation (2009).

157. It could be helpful if Policy 1 directed identification and mapping of the coastal environment, although this does appear to be happening as a matter of practice. The lack of a consistent methodology is of greater significance and some review participants suggested that further consideration should be given to methodological issues. The matters listed in Policy 1 leave considerable room for differences in practice.
158. The Review found that:
- Many councils have undertaken coastal environment mapping, which has helped with the implementation of the NZCPS 2010. The benefits of identifying the extent of the coastal environment in plans include fewer arguments about the coastal environment boundary. Examples of where this approach has been used include Waikato and Northland RPSs.
 - Other councils have adopted alternative approaches to mapping, for example, Auckland.
 - A regional-scale approach to mapping has provided a more coordinated and consistent outcome for subsequent district planning.
 - Mapping methodology is not consistent or systematic. There would be some benefit in having a systematic approach to the identification of the coastal environment that also acknowledges the different categories of relevant policies, such as landscape and coastal hazards, where the relevant landward extent varies depending on the factor under consideration.

Water quality policies

159. Objective 1 requires that coastal water quality is maintained and enhanced where it has deteriorated from its natural condition alongside other requirements. Policy 21 (Enhancement of water quality) requires that priority is given to improving degraded water quality where there are significant adverse effects on values and uses, including aquaculture, recreational and cultural activities, and requires engagement with tangata whenua. Policy 22 deals with sedimentation and Policy 23 relates to the discharge of contaminants, including sewage, stormwater and discharges from ports and other marine facilities.
160. The Section 32 analysis described the intent of the policies on water quality, sedimentation and discharges as:
- The improved identification in plans of key areas for improving coastal water quality, and the increased application of relevant controls and conditions.
 - For sedimentation, a more consistent application of plan controls to address sediment release and monitoring conditions on consents.
 - For discharges, a more consistent minimisation of mixing zones, the continued retreat from the discharge of raw sewage, the increased use of plan controls and consent conditions to manage stormwater discharges,

and the continued control of discharges from port and marine service sites.

161. The Review heard that the water quality objective of ‘maintaining coastal water quality, and enhancing it where it has deteriorated’ is generally appropriate.
162. Management across the land/coast boundary and between freshwater and coastal water was raised as an issue. The issues that were most often raised in relation to Policies 21–23 provide examples of this:
 - Sedimentation and the land-sea interface, including the downstream impact of land use inland of the coastal environment, particularly its effects on sensitive sites and coastal resource users who are dependent on high water quality.
 - Sewage/stormwater management and increasing urban pressures in general.
163. Feedback received through the Review included an issue with the lack of integration between land use, freshwater and coastal water management including standards. Sedimentation was specifically mentioned in the Sector Group Workshops by the aquaculture industry and environmental groups and in discussions with tangata whenua, with specific reference to the effects of different land uses, including forestry, on estuaries and coastal water quality. It was also stated that regional councils have made implementation of the NPS – Freshwater Management a priority for their individual regions.
164. Management of the effects of land use on coastal wetlands and estuaries was identified as a particular issue that spans both the NPS – Freshwater Management 2014 and the NZCPS 2010. It was considered that the interface between these two policy statements requires a special focus in the development of regional plans, with differing views on how well integration had been achieved to date. There was no indication through the Review that the NPS – Freshwater Management and NZCPS coastal water policies are inconsistent and could not be implemented in tandem.
165. The effectiveness of policy development for coastal water quality in regional coastal plans is hampered by a lack of technical information (particularly about baseline water quality) and the cost of obtaining such information. There are limited examples of policy statements and plans that identify areas of degraded coastal water quality. There is limited national guidance on the NZCPS water policies and that guidance has not been updated following *King Salmon*. Similarly, Councils have requested further guidance for some aspects of the NPS-FM implementation. The Ministry for the Environment is currently working on guidance in relation to the impacts of freshwater contaminants on estuaries.
166. The tangata whenua perspective on the discharge of sewage is clear and unambiguous. Tangata whenua who were contacted as part of the Review supported the strengthened policy direction in the NZCPS 2010 but noted that there remains a tension between tangata whenua values and council and community views on practicality and cost.

167. Practicality issues around the separation of sewage and stormwater systems were raised. The water industry groups were particularly concerned that following *King Salmon*, Policy 23(2) could effectively be interpreted as prohibiting the discharge of human sewage. Policy 23(4) relating to cross contamination was noted but the upcoming need for replacement discharge consents and the growing Auckland population heightened potential conflicts.
168. In summary, the Review found that:
- Sedimentation and the land-sea interface, including the downstream impact of land use inland of the coastal environment, and sewage and stormwater management from increasing urban pressures, continue to be challenging.
 - Options for coordinated implementation of the NZCPS 2010 and the NPS – Freshwater Management should be identified. A better understanding of the practical problems facing local government is likely to be useful.
 - Tangata whenua support the strengthened water quality policy direction in the NZCPS 2010. However, there remains a tension between tangata whenua values and council and community views on practicality and cost.
 - There is a lack of baseline information on coastal water quality. The effectiveness of policy development for coastal water quality in regional coastal plans is hampered by a lack of technical information (particularly about baseline water quality) and the cost of obtaining such information.
 - The practicality of separating sewage and stormwater systems continues to be challenging.

Coastal hazard policies

169. The NZCPS 2010 contains new policies on coastal hazards. The Section 32 report is clear that the intent of the coastal hazard policies is to encourage a shift from the predominant focus on hard protection works to a ‘portfolio’ of strategies for reducing hazard risks for both new developments and existing assets.
170. Policies 24–27 cover the management of coastal hazard risks. They include requirements for local authorities to identify hazard areas, undertake coastal hazard risk assessments for a timeframe of ‘at least the next 100 years’ and consider the effects of climate change. NZCPS 2010 Objectives 4, 5 and 6 are particularly relevant to these policies.
171. Policy 3 promotes a precautionary approach to managing activities in the coastal environment when their effects are uncertain but potentially significantly adverse, particularly where the use and management of coastal resources are potentially vulnerable to the effects of climate change.
172. Councils were generally supportive of the coastal hazard policies but noted that implementation has been particularly difficult and controversial at the territorial

authority level.⁵⁸ Coastal hazard management also requires particular technical expertise. Two district councils have withdrawn provisions seeking to implement these policies following community concerns about the methodologies that were applied to identify hazard lines and the inclusion of those lines in plans.

173. At the regional level, the main implementation issue that was identified through the Auckland Unitary Plan process was the lack of strong national direction on how this identification should be carried out. Auckland Council supported the policies but considered that they are too high level to support the intended outcomes and do not recognise the challenges of implementation (including data availability, community, iwi and stakeholder values, and financial constraints). Similarly, one iwi pointed to sea level rise as a significant issue in relation to their cultural heritage immediately adjacent to the coast.
174. Responding to coastal hazards in urban areas is particularly challenging as there is often a presumption from the community that developed areas will continue to be protected because of the risk presented to public access, amenity values, natural and built assets (including residential property), and essential infrastructure. Managed retreat in urban areas is difficult as there are often limited relocation options. Auckland Council suggested that a wording change from ‘managed retreat’ to ‘managed realignment’ could be beneficial.⁵⁹
175. In areas such as Auckland, pressure for new housing is conflicting with best practice to set development back from the coast. This points to a need for stronger alignment between the NZCPS and the RMA versus the Building Act and any future NPS for Natural Hazards, particularly the need for consistency between timeframes, extreme events and the assessment of climate changes effects.
176. In summary, the Review found that:
 - Implementing the NZCPS 2010 coastal hazard policies is very challenging, particularly with regard to data availability, a lack of community awareness, understanding and acceptance of the risks associated with coastal hazards, and financial constraints.
 - Implementation has been hampered by a lack of national guidance. Guidance and support on appropriate risk assessment methodologies is needed so that councils can engage with communities in identifying agreed levels of risk that communities are willing to tolerate. Guidance is also needed on how coastal inundation, storm surge and sea level rise should be mapped.
 - The 100-year risk timeframe presents particular challenges. While councils generally consider this timeframe appropriate, it is inherently difficult to implement, requiring communities to think well beyond the established planning timeframes as well as their own lifetimes.

⁵⁸ Part 2G, Case study 6: Managing coastal hazard risks – Mapua and Ruby Bay

⁵⁹ Parr 2G, Case study 7: Managed retreat in an urban environment – Auckland Council

- Consistency in RMA national direction on natural hazards is essential. The work that is planned as part of the Government’s national direction programme was particularly noted. Consideration should be given to ensuring that the RMA and the Building Act 2004 work well together, particularly in relation to the control of new structures in areas prone to coastal hazards (e.g. consistency between timeframes (100 vs. 50 years), and methodologies for identifying and assessing risks associated with climate change effects).
- More support for planning at regional and national levels is likely to achieve a better outcome because coastal hazard management can be particularly contentious at the local level. There are many issues at stake (e.g. infrastructure, private property and access to public space), compounding the difficulties associated with addressing such challenging issues at the local level and within short-term electoral cycles.

177. It is noted that in her 2015 report *Preparing New Zealand for Rising Seas: Certainty and Uncertainty*⁶⁰, the Parliamentary Commissioner for the Environment (PCE) explained very clearly the challenges for councils in dealing with coastal hazard risks and made a number of recommendations, including on improving the direction and advice given to local councils. While the PCE recommended that the NZCPS provisions about planning for sea level rise be moved from the NZCPS to national direction on natural hazards, the Review did not identify the nature and placement of the current provisions as an issue.
178. It is also noted that the Ministry for the Environment is currently updating the national guidance on coastal hazards and climate change. At the same time, DOC is preparing guidance on the NZCPS coastal hazard policies.

Other NZCPS provisions

Policy 12 (Harmful aquatic organisms)

179. Policy 12 directs the control of activities that pose biosecurity risks, including activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread.
180. The Board of Inquiry noted in its final report:

Fundamentally, the place to deal with biosecurity is not only under its related legislation but the RMA as well. ... The Board considers it is essential that biosecurity risks are accounted for under the NZCPS and subsequent plans. The potential risk to New Zealand’s indigenous biodiversity, the aquaculture, salmon and fishing industries, and consequently any economic and social wellbeing, is

⁶⁰ Parliamentary Commissioner for the Environment (2015). *Preparing New Zealand for Rising Seas: Certainty and Uncertainty*. Parliamentary Commissioner for the Environment, Wellington.

*far too real to ignore consequences with such a high potential impact.*⁶¹

181. The Review found that:

- Regional councils are giving effect to Policy 12 as they review their regional coastal plans, with particular attention being paid to the risks of introducing harmful aquatic organisms via vessel hull fouling activities such as hull inspection and cleaning to manage biofouling.
- Greater consistency between regions is desirable from central and local government and stakeholder perspectives.
- The integrated use of all tools that are available to achieve Policy 12 is desirable, including RMA provisions in RPSs and regional coastal plans, pathway management plans under the Biosecurity Act, and consistency with other tools such the *Craft Risk Management Standard – Biofouling on Vessels Arriving in New Zealand*⁶² (prepared under the Biosecurity Act 1993).

Policy 14 (Restoration of natural character)

182. Policy 14 directs that the restoration of coastal natural character is to be promoted through RPSs, plan provisions and regulatory decisions. This policy includes possible approaches to restoration, such as habitat creation for indigenous species and the redesign of structures that interfere with ecosystem processes.

183. Given the focus on up-front planning, Policy 14 has been effective in achieving policies and consent conditions that support restoration. Policy 14 is being implemented on a consent-by-consent basis and the results are often small scale and beneficial locally rather than making a significant contribution to restoration or rehabilitation at a district or regional scale. Well-designed infrastructure projects, such as major new roads, provide larger-scale opportunities.

184. Particular questions that were identified in the Review included:

- Is there support for a national or regional approach to restoration and, if so, should outstanding and/or high natural character areas be restored or rehabilitated as a priority?
- How can restoration or rehabilitation of the natural character be undertaken in a meaningful way and how well are restoration provisions enforced?
- How could tools such as coastal occupation charges (under the RMA) fund restoration or rehabilitation by a council?

⁶¹ BOI Report and Recommendations to the Minister of Conservation (2009). Vol 2, pp. 73–74.

⁶² Ministry for Primary Industries (2014). *Craft Risk Management Standard – Biofouling on Vessels Arriving in New Zealand*. Ministry for Primary Industries, Wellington.

Policy 16 (Surf breaks of national significance)

185. The intent of Policy 16 is to ensure that nationally significant surf breaks are identified and protected, and that access to and use of them is maintained.
186. Policy on surf breaks is new to the NZCPS 2010. The Board of Inquiry noted that:
- ... some of New Zealand’s surf breaks are nationally and even internationally significant, attracting visitors from around the world, as well as providing a variety of surfing opportunities including some for learning on nursery surf breaks. The quality of the wave can potentially be compromised by developments in the swell corridor seaward of the break, and the enjoyment of surf breaks by surfers compromised by discharges, limitations on access, and changes to natural character.*⁶³
- The Board also commented that ‘the economic value of surfing to tourism and the social benefits should not be underestimated’.
187. Policy 16 and the schedule of nationally important surf breaks has raised the profile of surf breaks as a significant natural resource. Policy 16 has had some impact on resource consent decisions, including decisions on Port Otago dredging. Without this policy, the impacts on surf breaks would have received less attention.
188. Since gazettal of the NZCPS in 2010, several regional councils have gone on to identify regionally important surf breaks in the second-generation regional coastal plans. However, implementation is generally more advanced at the RPS level than through the detailed implementation of policies and methods in regional coastal plans and district plans.
189. Some councils and industry groups continue to question why surf breaks are identified specifically in the NZCPS 2010 over other areas or ecosystems of national importance.
190. The surfing community noted that some surf breaks around New Zealand are more significant than those listed in the NZCPS 2010. However, there is reluctance to have these identified outside the surfing community due to the tension between protection through regulatory means and protection through ‘secrecy’.
191. Methods outside the NZCPS 2010 are being used to protect surf breaks, with Taranaki Regional Council announcing the first surf break reserve on the north Taranaki coast in 2016.
192. The Review found that:
- The precise identification of surf breaks of national importance in the NZCPS 2010 has reduced disputes about their identification and raised their profile as a significant national resource. This has resulted in councils investing in facilities to support the use of surf breaks of national significance.

⁶³ BOI Report and Recommendations to the Minister of Conservation (2009).

Policy 17 (Historic heritage identification and protection)

193. Policy 17 seeks to protect historic heritage in the coastal environment from inappropriate subdivision, use and development. The identification and assessment of sites is encouraged along with integrated management between relevant entities. Objective 6 specifically notes that historic heritage in the coastal environment is extensive but not fully known, and is vulnerable to loss or damage.
194. Iwi have strong connections with the coast and climate change effects threaten many sites of cultural significance. Many of these sites have not been identified in plans, although practices vary significantly around New Zealand. The level of trust and the depth of relationship between iwi and councils may be a factor in determining the approach taken.
195. The Review found that:
- Participants in the Review generally did not identify Policy 17 implementation as a particular issue. NZCPS 2010 provisions for historic heritage reinforced, rather than led, good implementation practice.
 - The lack of information on historic heritage in the marine environment is constraining the use of a strategic approach in regional coastal plans. This increases the risk of issues arising at the consent stage after the applicant may have committed significant resources to a project.

Policies 18 (Public open space), 19 (Walking access) and 20 (Vehicle access)

196. New Zealanders have a special relationship with the coast and public access is highly prized. Policies 18-20 focus on recognising the public open space qualities of the coast, and establish requirements to plan for open space, to maintain and enhance public access to and along the coast, and to manage the effect of vehicle use on ecological values and other beach users.
197. The Section 32 report anticipated that these policies would support more strategic planning for coastal open spaces, and that plans and consent conditions would reflect an increased and more consistent provision for public walking access and managing the effects of vehicle use on the coast.
198. Policy implementation has occurred through a strategic approach by many regions and districts using regional policy statements and plans combined with non-RMA tools such as local authority reserve management and public access strategies to promote and encourage public access. This approach is largely unsurprising given the significant proportion of the coastal margin that is in public ownership.
199. Access to the coast is most difficult to control from or across private land. Councils commented that they provide controlled access points to the coastline that help to manage some issues. However, where subdivision occurs, it is difficult to control informal access across the foreshore.

200. Vehicles on beaches is not a high-priority issue for many councils but Policy 20 is recognised as having supported more work on the management of these for those councils that have progressed work in this area. Controls through RMA plans are used in some places. Many councils pointed to local government bylaws as being the appropriate method for implementing this policy in their district. All territorial authorities have extended their boundary to Mean Low Water to enable the management of beaches including the passage of vehicles.
201. Community education programmes on the potential adverse effects of vehicle use together with physical barriers to prevent access to sensitive areas appear to be most effective in controlling vehicle access. However, in some areas there was little appetite to take on the issue, which is often contentious locally.
202. Enforcement is a big issue for councils due to resourcing constraints and concerns for staff safety. Increasing damage to beach access and coastal walkways from coastal hazards was identified as another significant and growing issue.
203. The Review found that:
 - The access and vehicle policies support councils who choose to address the issue through their RMA documents and decision-making, but do not compel all councils to take action or achieve particular outcomes where these issues occur.
 - A number of tools are available to manage these issues and the appropriate way to deal with issues is determined locally.

Focus of future work

Supporting strategic and integrated planning

204. The clear interrelationships between the directive policies and the balance of the NZCPS 2010 require careful consideration, particularly in relation to integrated management and strategic planning for use and development. Therefore, any further assessment should focus on strategic and integrated management rather than a particular sector.
205. Better use should be made of non-statutory processes as a catalyst for further work involving iwi and stakeholders, including agencies with different statutory responsibilities, for example by building on strategic spatial planning approaches such as those used in the Hauraki Gulf process.

Directive policies

206. Some participants in the Review considered that the directive policies in the NZCPS 2010 relating to outstanding areas and biodiversity should be reviewed following *King Salmon*. The Review found that any further assessment of the NZCPS 2010 in relation to the directive policies (particularly Policies 13 and 15) should include a detailed audit of on the ground implementation work that has been conducted to date.
207. In relation to Policy 11, it is particularly important that filling information gaps and sharing information between agencies are prioritised.
208. There is wide interest in the directive policies. A stakeholder process could be used to consider sharply contrasting views on these policies, and to explore the potential for consensus.

Responding to uneven implementation

209. In relation to regional and district planning approaches, a more concentrated focus of resources and support in areas where there are particular challenges could be considered (e.g. in Marlborough).
210. The promotion of more direction through region-wide (rather than district by district) identification, mapping and assessment, particularly in relation to the extent and characteristics of the coastal environment, would be beneficial.

Work on implementation guidance and methodologies

211. DOC's guidance to support the NZCPS 2010 should be completed and opportunities to share implementation experiences should be increased. Ways to better support coordinated implementation of the NZCPS 2010 and other national policy statements should also be considered (particularly in relation to the NPS – Freshwater Management and the NPS on Urban Development Capacity).
212. Prioritising work on developing consistent assessment methodologies would be valuable, particularly methods for identifying outstanding natural character, natural landscapes and natural features. Consistent methodologies would also greatly assist with the mapping and identification of the coastal environment, and coastal hazard risk assessments.

Monitoring and reporting

213. An approach to respond to the remaining provisions of Policy 28 needs to be developed, including the gathering of on the ground information and improved monitoring and reporting. This work would also address reporting on the effectiveness of the NZCPS 2010 in achieving the purpose of the RMA, including:
- developing a nationally consistent monitoring and reporting programme (Policy 28(a)); and
 - gathering information that will assist in providing a national perspective on coastal resource management trends, emerging issues and outcomes (Policy 28(b)).

