

INTERNATIONAL ENVIRONMENTAL LAW

I. INTRODUCTION

In 2012, New Zealand announced its decision not to sign up to a second commitment period under the Kyoto Protocol.¹ Instead, it will set its next emission reduction target under the United Nations Framework Convention on Climate Change (UNFCCC).² New Zealand also commenced a joint study with the Republic of Korea to investigate linking the emissions trading schemes of these countries. At the United Nations Conference on Sustainable Development (Rio+20), New Zealand focused on the environmental management of oceans and fossil fuel subsidy reform, signed up to the global partnership on oceans, and supported Australia's launch of the World Indigenous Network. New Zealand also signed a Memorandum of Understanding on Environmental Cooperation with Indonesia in 2012. National developments included introduction of a measure to protect Hector's and Maui's dolphins, new emissions projections, and significant amendments to the New Zealand Emissions Trading Scheme (NZETS). The NZETS amendments include the extension of the "one for two" surrender obligation to all non-forestry sectors with no set end date, the introduction of offsetting for pre-1990 forests, and the removal of a start date for surrender obligations for biological emissions from agriculture. There were also a number of developments (both national and international) connected with fisheries, the marine environment, and Antarctica, which are not covered in this report because they are covered in the reports of Joanna Mossop "Law of the Sea and Fisheries" and Alan Hemmings "The Antarctic Treaty System" (this issue).³ Recourse to those reports is necessary for a full account of New Zealand's activities relating to international environmental law in 2012.

- 1 Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 148 (opened for signature 16 March 1998, entered into force 16 February 2005).
- 2 United Nations Framework Convention on Climate Change (UNFCCC) 1771 UNTS 107 (opened for signature 9 May 1992, entered into force 21 March 1994).
- 3 Omitted international developments include the New Zealand-United States joint proposal for a Ross Sea marine protected area (submitted at the annual Commission for the Conservation of Antarctic Marine Living Resources meeting) and the Agreement between the Government of New Zealand and the Government of the Republic of Korea on Antarctic Cooperation (see Alan D Hemmings "Year in Review: The Antarctic Treaty System" (2012) 10 NZYIL (this volume)); New Zealand's declaration of intervention in *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* ICJ CR2013/13; New Zealand's expression of concern at the Republic of Korea's intention to commence a scientific whaling programme; the 2012 Joint Statement on Whaling and Safety at Sea, and the announcement of New Zealand's intention to cooperate and coordinate with Australia, France and the United States to strengthen fisheries surveillance in the Pacific region (see Joanna Mossop "Year in Review: Law of the Sea and Fisheries" (2012) 10 NZYIL (this volume)). Omitted national developments include the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Marine Legislation Bill 2012 No 58-2 (see Mossop, cited above); and the Antarctica (Environmental Protection: Liability Annex) Amendment Act 2012 (see Hemmings, cited above).

II. INTERNATIONAL DEVELOPMENTS

A. Climate Change and Renewable Energy

In November, New Zealand announced its decision to align its climate change efforts with the United States, Japan, China, India, Canada, Brazil, Russia and the rest of the group collectively responsible for 85% of global emissions.⁴ New Zealand will not sign up to a second commitment period under the Kyoto Protocol and will instead take a new economy-wide greenhouse gas (GHG) emission reduction target under the UNFCCC in the transition to a comprehensive new agreement (2013-2020). New Zealand remains a party to the Kyoto Protocol.

From 26 November to 7 December, New Zealand participated in the Eighteenth Conference of the Parties (COP-18) to the UNFCCC and the Eighth Meeting of the Parties (MOP-8) to the Kyoto Protocol in Doha, Qatar. New Zealand contributed to the successful closure of two Ad Hoc Working Groups; the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP). Doha outcomes included agreement to adopt, by 2015, a universal climate agreement to apply post 2020, the launch of a new eight year commitment period under the Kyoto Protocol, and continuation of Kyoto Protocol market mechanisms. Other Doha outcomes can be found on the UNFCCC website.⁵ Doha decisions limit New Zealand access to Kyoto markets after 2015.⁶

New Zealand continued to explore regional and bilateral linkages among carbon markets and to consider potential for developing an Asia-Pacific regional carbon market. As part of this, New Zealand began a joint study with the Republic of Korea in May 2012 to investigate linking the emissions trading schemes of these countries.⁷ As noted in last year's report, potential linking between the New Zealand and Australian emissions trading schemes is already under investigation.⁸

4 Hon Tim Groser (Minister of Trade and Minister for Climate Change Issues) "New Zealand Commits to UN Framework Convention" (press release, 9 November 2012).

5 See "The Doha Climate Gateway" <<http://unfccc.int>>.

6 See Hon Tim Groser and Hon Simon Bridges (Minister of Energy and Resources and Associate Minister for Climate Change Issues) "Doha Climate Conference – Looking to the Long Term" (press release, 9 December 2012). This is a result of the Doha decision to restrict access to the buyer's side of the international carbon market set up under the Kyoto Protocol to those countries undertaking Kyoto Protocol second commitment period commitments (mainly Europe and Australia).

7 Hon Tim Groser "Minister welcomes Sth Korea ETS and linking study" (press release, 4 May 2012).

8 Josephine Toop "International Environmental Law" (2011) 9 NZYIL 316-328 at 318.

In August, New Zealand announced that it will provide NZD 18.6 million for a 1.05MW solar energy system in Afghanistan's Bamyan province, which will be the largest solar plant in Afghanistan.⁹ The plant will provide solar power to 2500 homes, an orphanage and a hospital.

In December, New Zealand announced its intention to join the Climate and Clean Air Coalition (CCAC).¹⁰ The CCAC is a voluntary initiative which focuses on short-lived climate pollutants with potent effects such as methane, black carbon (soot), and many hydrofluorocarbons (HFCs).

B. Rio+20

New Zealand attended the United Nations Conference on Sustainable Development (Rio+20) in June. New Zealand's focus at Rio+20 was upon improving environmental management of oceans and fossil fuel subsidy reform.¹¹ In regard to the former, New Zealand sought a Rio+20 commitment to eliminating harmful fisheries subsidies which contribute to overfishing and overcapacity, undermine fisheries management decisions, impact negatively on sustainable development, and contribute to illegal, unregulated and unreported (IUU) fishing.¹² New Zealand also reiterated the Pacific Islands Forum (PIF) Leaders' 2011 call for "blue economy" issues to be brought to the attention of Rio+20.¹³ New Zealand welcomed the oceans commitments in the Rio+20 outcome document; "The Future We Want",¹⁴ including the commitment to eliminate harmful fisheries subsidies, and the recognition of the importance of Pacific Small Island Developing States obtaining a greater share of the return from marine resources. New Zealand's second priority area was a commitment to phasing out, over the medium term, inefficient government subsidies for fossil fuels that some countries have in place, whilst mitigating adverse impacts upon vulnerable groups.¹⁵ New Zealand supported stronger commitments than were articulated in the outcome document, but the international recognition of the importance of fossil fuel subsidy reform by all United Nations members was some progress.¹⁶

9 Hon Murray McCully (Minister of Foreign Affairs) "Renewable energy initiative for Bamyan" (press release, 2 August 2012).

10 Hon Tim Groser "NZ to join Climate and Clean Air Coalition" (press release, 13 December 2012).

11 See Ministry of Foreign Affairs and Trade "Rio + 20" for statements, speeches and media releases <www.mfat.govt.nz>; "Submission for the Rio+20 Process by New Zealand" (November 2011) <www.mfat.govt.nz>; and Hon Nick Smith (Minister of Conservation) "Oceans and Greening Growth NZ Rio+20 Priority" (press release, 8 March 2012).

12 Hon Amy Adams (Minister of the Environment) "New Zealand delegation leaves for Rio+20" (press release, 18 June 2012).

13 At the September 2011 PIF, leaders urged the international community to work towards integrated oceans management modelled on the Pacific Oceanscape to improve the ocean environment and maximise returns to Small Island Developing States from the sustainable use of ocean resources.

14 GA Res 66/288, A/RES/66/288, (2012).

15 Hon Amy Adams "Opening address to the Rio+20 Summit" (press release, 21 June 2012).

16 Hon Amy Adams "NZ's key goals included in Rio+20 outcome document" (press release, 21 June 2012).

At Rio+20, New Zealand signed up to the global partnership on oceans (GPO).¹⁷ The GPO is a coalition of governments, UN agencies, companies, civil society, and research institutions, who will work together to look for new ways to support healthier oceans and implement existing international regulation.¹⁸ New Zealand also supported Australia's launch of the World Indigenous Network (WIN) at Rio+20. WIN is the first global mechanism to connect land and sea managers and enable knowledge sharing. It will provide a way for indigenous peoples to share experiences and learn from each other in regard to managing natural resources. New Zealand believes it can contribute to the success of WIN by drawing on its experience of indigenous Māori land and sea management and joint Māori and Government initiatives.¹⁹

C. Biodiversity

In October, New Zealand attended the eleventh conference of the parties to the Convention on Biological Diversity²⁰ (COP-11), and the sixth meeting of the parties to the Cartagena Protocol on Biosafety²¹ (MOP-6), held in India. At COP-11, a New Zealander chaired Working Group II, which addressed implementation of the Strategic Plan and progress towards the Aichi targets. During MOP-6, a New Zealand representative was appointed to the Compliance Committee.

Maui's dolphins are a critically endangered (International Union for Conservation of Nature (IUCN) red list) subspecies of Hector's dolphins found only in New Zealand. In its 2012 annual report, the Scientific Committee of the International Whaling Commission (IWC) expressed "particular concern about the low abundance of Maui's dolphins".²² Since "[b]ycatch in gillnet and trawl fisheries" are "the most serious threat" to these dolphins, the Committee recommended extension of the North Island Protected area to Hawera, protection "offshore to the 100m depth contour, including the harbours, for gillnet and trawl fisheries" and "protecting the north coast of the South Island" to provide safe "corridors" between the islands.²³

17 Hon Amy Adams "NZ commits to global ocean partnership at Rio+20" (press release, 20 June 2012).

18 See Global Partnership for Oceans at "About" and "The Declaration for Healthy and Productive Oceans to Help Reduce Poverty" (2012) <<https://globalpartnershipforoceans.org>>.

19 Hon Amy Adams "NZ supports indigenous network launched at Rio+20" (press release, 21 June 2012). See also <www.worldindigenousnetwork.net/>.

20 Convention on Biological Diversity 1760 UNTS 79 (opened for signature 5 June 1992, entered into force 29 December 1993).

21 The Cartagena Protocol on Biosafety to the Convention on Biological Diversity 2226 UNTS 208 (opened for signature 29 January 2000, entered into force 11 September 2003).

22 International Whaling Commission (IWC) *The Report of the Scientific Committee* (International Whaling Commission, Panama City, Panama, 2012) at 79.

23 At 79.

D. Bilateral Environmental Cooperation Agreements

In April, New Zealand signed a Memorandum of Understanding on Environmental Cooperation with Indonesia (New Zealand-Indonesia ECA) *inter alia* to “[e]ncourage sound environmental policies and practices and improve the capacities and the capabilities of the Parties, including organisations identified by each Party as relevant to environmental management, to address environmental matters”.²⁴ The New Zealand-Indonesia ECA provides that the Parties “shall establish an Environment Committee comprising senior officials and other officials of their government agencies responsible for environmental matters”.²⁵ This Committee met for the first time on 29 May.

Activities relating to existing cooperation agreements included the third meeting of parties under the New Zealand-China ECA in March, and Environment Committee meetings with the Philippines and Malaysia during May (New Zealand has a bilateral ECA or equivalent with these countries).

III. NATIONAL DEVELOPMENTS

A. Climate Change

New Zealand’s last net position forecast for 2012 projected a 35.2 million unit surplus for the first commitment period. Due to low carbon prices, the worth of this surplus (as at December 2012) sat at NZD 10 million.²⁶

The government made significant changes to the NZETS through the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012, in order to make the scheme “more business-friendly”.²⁷ This followed the 2011 Emissions Trading Scheme Review Panel (ETSRP) review of the NZETS. As outlined in last year’s report, the ETRSP advised that the scheme’s implementation be slowed.²⁸ The ETRSP recommended, *inter alia*, continuation of the price cap beyond 2012 and extension of the half obligation so that it no longer end in 2012 but instead phase out over three years. The Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 slows implementation of the scheme beyond this. The half obligation, whereby participants need only surrender one emission unit for every two tonnes of emissions, has been extended with no set end date, and applies to all non-forestry sectors when they enter the scheme. The phase-out of industrial allocation is suspended until non-forestry sectors face full surrender

24 Memorandum of Understanding between the Government of New Zealand and the Government of the Republic of Indonesia on Environmental Cooperation [2012] NZTS 2 (17 April 2012), art 1(1).

25 At art 4(2).

26 Ministry for the Environment “New Zealand’s net position under the Kyoto Protocol” <www.mfe.govt.nz>.

27 Hon Tim Groser “ETS Amendment Bill passes first reading” (press release, 23 August 2012).

28 Toop, above n 8, at 321.

obligation. The price cap option (the option to buy New Zealand Units (NZUs) from the government for a fixed price) is also to continue with no end date specified. The ban on the export of NZUs from non-forestry sectors has been extended and remains in place as long as the fixed-price option.

The start date for the obligation to surrender units for biological emissions from agriculture is no longer specified. Previously, it was 2015 and the ETRSP recommended the retention of this date. The government has indicated that there will be surrender obligations for biological emissions from agriculture only if there are economically viable and practical technologies available to reduce such emissions and New Zealand's trading partners make more progress on tackling their emissions in general.²⁹ This is significant in light of the fact that half of New Zealand's emissions come from agriculture. Offsetting has been introduced as an option for pre-1990 forests. Offsetting allows landowners to convert pre-1990 forest land to a different use without incurring deforestation liability, provided that they plant a new carbon-equivalent forest in another location. Pre-1990 forest landowners will continue to receive their allocation of emissions units in full, unless they take up offsetting. Those who take up offsetting will be required to surrender or repay NZUs equivalent to the second tranche of the forestry allocation for the land being offset. Among other key amendments, the power to introduce auctioning of NZUs within an overall cap has been introduced (although the Government has not yet decided whether this power will be exercised), the requirement to 'back' all NZUs issued with a Kyoto unit has also been removed, and the statutory requirement for five yearly reviews of the operation and effectiveness of the ETS has been replaced with a discretionary power for the Minister for Climate Change Issues to initiate a review at any time and by any method. For the synthetic greenhouse gas (SGG) sector, the obligations relating to sulphur hexafluoride have been moved to large users (from importers and manufacturers), and the NZETS obligation on the importation of SGG in motor vehicles and goods has been removed and replaced with a levy.³⁰

In 2012, the government also moved to ban certified emission reductions (CERs) and emission reduction units (ERUs) generated from large-scale hydropower projects (greater than 20 megawatt capacity) which do not meet the World Commission on Dams' guidelines,³¹ and promulgated a number of other climate change regulations which make small adjustments to the scheme.³²

29 See Ministry for Primary Industries "FAQs – Recent changes for Agriculture in the Emissions Trading Scheme" <www.mpi.govt.nz>.

30 Further information about these and other amendments can be found in the Explanatory Notes section of the Climate Change Response (Emissions Trading and Other Matters) Amendment Bill (which preceded the Act) and on the New Zealand government climate change website <www.climatechange.govt.nz>.

31 See Climate Change (Unit Register) Amendment Regulations 2012 and Tim Groser "Units lacking environmental integrity to be banned" (press release, 17 December 2012). Note, CERs from gas destruction projects have already been banned (see Toop, above n 8, at 320).

32 See for instance Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2012, Climate Change (General Exemptions) Amendment Order 2012, Climate Change (General Exemptions) Amendment Order (No 2) 2012, Climate Change (Other

B. Renewable Energy

2012 saw the introduction and defeat of the Electricity (Renewable Preference) Amendment Bill 2012 (a Labour Party Bill). This opposition Bill attempted to re-enact a ban on baseload fossil fuel thermal electricity generation, with certain exemptions such as security of supply. A ban had previously been in place between September 2008 (as part of the NZETS created by the Labour-led government) and December 2008 (repealed by the National-led government after it came to power).

In May, the Parliamentary Commissioner for the Environment, who is an independent Officer of Parliament, released a report which called for greater protection of New Zealand's wild and scenic rivers.³³ Most of New Zealand's electricity comes from renewable hydro-electricity, but there is a tension between the environmental heritage value of wild and scenic rivers and the use of rivers for generating electricity with fewer emissions. The report makes recommendations about improving the policy, processes, legislation and institutions within which choices between hydroelectric schemes and wild and scenic rivers are made. The Government is considering the report.

C. Biodiversity

A new study published in 2012 estimated that there are only 55 Maui's dolphins over one year old remaining and that the population is declining each year.³⁴ As noted earlier, the Maui's and Hector's dolphin received attention from the Scientific Committee of the IWC in 2012.³⁵ New Zealand took some steps in 2012 towards dolphin protection, with the introduction of a prohibition on set netting within two nautical miles of the mean high-water mark from Pariokariwa Point to Hawera and prohibition of commercial set netting between two and seven nautical miles of the mean high-water mark from Pariokariwa Point to Hawera unless there is an observer on board the vessel.³⁶

*Josephine Toop**
University of Canterbury

Removal Activities) Amendment Regulations 2012, and Climate Change (Agriculture Sector) Amendment Regulations 2012.

33 Dr Jan Wright *Hydroelectricity or wild rivers? Climate change versus natural heritage* (Parliamentary Commissioner for the Environment, May 2012).

34 Rebecca Hamner and others *Estimating the abundance and effective population size of Maui's dolphins using microsatellite genotypes in 2010-11, with retrospective matching to 2001-07* (Department of Conservation, March 2012) at 2.

35 Please see the expression of concern and recommendations of the Scientific Committee, above n 22, at 79.

36 The Fisheries (Set Net Prohibition from Pariokariwa Point to Hawera) Notice 2012. See also Letter from Hon David Carter (Minister for Primary Industries) to Stakeholders regarding interim set net measures and the Maui's dolphin (25 June 2012).

* PhD Scholar.