INTERNATIONAL ENVIRONMENTAL LAW

I. Introduction

In 2013, New Zealand announced its unconditional target to reduce greenhouse gas emissions under the United Nations Framework Convention on Climate Change (UNFCCC),[1] participated in the nineteenth Conference of the Parties to the UNFCCC (COP-19) and the ninth Meeting of the Parties (MOP-9) to the Kyoto Protocol,[2] submitted reports to the UNFCCC, hosted informal climate change dialogues, co-hosted the Pacific Energy Summit, announced new emissions projections, and amended the New Zealand Emissions Trading Scheme. There was also climate change related case law. 2013 saw New Zealand sign the Minamata Convention on Mercury,[3] changes to petroleum and mineral regulation in New Zealand including in the exclusive economic zone and case law about the precautionary principle. In the biodiversity area, New Zealand was successful in its proposal to have nine species of New Zealand geckos which were originally listed in Appendix III under the Convention on International Trade in Endangered Species (CITES)[4] transferred to Appendix II, and the Scientific Committee of the International Whaling Commission reiterated its concern about the survival of Maui's dolphin (an endangered species found only in New Zealand). Some new domestic regulation in regard to these dolphins was promulgated. New Zealand also released a National Plan of Action for the Conservation and Management of Sharks. In addition, there were a number of national and international developments connected with fisheries, the marine environment, and Antarctica, which are not addressed here because they are covered in the reports of Joanna Mossop "Law of the Sea and Fisheries" and Alan Hemmings "The Antarctic Treaty System" (this volume).[5] Accordingly, recourse to those reports is necessary for a fuller account of New Zealand's activities relating to international environmental law in 2013.

1 United Nations Framework Convention on Climate Change 1771 UNTS 107 (opened for signature 9 May 1992, entered into force 21 March 1994) [UNFCC].

2 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).

3 Minamata Convention on Mercury (opened for signature 10 October 2013, not yet in force).

4 Convention on International Trade in Endangered Species 993 UNTS 243 (opened for signature 3 March 1973, entered into force 1 July 1975).

5 Omitted international developments include: a revised New Zealand and United States Ross Sea marine protected area proposal submitted to the annual Commission for the Conservation of Antarctic Marine Living Resources meeting in October (see Alan Hemmings "Year in Review: The Antarctic Treaty System (2013) 11 NZYIL (this volume)); developments in *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (see Elana Geddis and Penelope Ridings "Whaling in the Antarctic: Some Reflections by Counsel" (2013) 11 NZYIL (this volume)); and New Zealand hosting the first commission meeting of the South Pacific Regional Fisheries Management Organization (see Joanna Mossop "Year in Review: Law of the Sea and Fisheries" (2013)

II. International Developments

A. Climate Change and Renewable Energy

As noted in last year's report, New Zealand has decided not to sign up to a second commitment period under the Kyoto Protocol and to align its climate change efforts with the group of countries that includes the United States, Japan, China, India, Canada, Brazil and Russia.[6] In August 2013, New Zealand announced its unconditional target to reduce greenhouse gas emissions to 5 per cent below 1990 levels by 2020 under the UNFCCC rather than the Kyoto Protocol,[7] although this will be managed using the framework of rules applicable to the Kyoto Protocol's second commitment period.[8] In September, New Zealand hosted international climate change negotiators for informal dialogues on the new United Nations climate change agreement.[9] In November, New Zealand participated in COP-19 to the UNFCCC and MOP-9 to the Kyoto Protocol in Warsaw, Poland. New Zealand's Minister for Climate Change Issues Hon Tim Groser co-chaired the ministerial dialogue on the Durban Platform working on the shape of the international agreement post-2020 and chaired a meeting of ministers associated with the Friends of Fossil Fuel Subsidy Reform. 'The Friends' is a group of countries that supports the phase out of inefficient fossil fuel subsidies spearheaded by New Zealand.[10] COP-19 and MOP-9 saw a number

11 NZYIL (this volume)). Omitted national developments include: the Maritime Transport Amendment Act 2013 which allowed for accession or ratification of a number of international instruments (see Mossop, cited above); the Exclusive Economic Zone and Continental Shelf (Environmental Effects–Permitted Activities) Regulations which brought the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 into effect in June 2013 (transitional measures applied until June 2013) and prescribed permitted activities under the regime (see Mossop, cited above); the Exclusive Economic Zone and Continental Shelf (Environment Effects) Amendment Act 2013 which *inter alia* introduced a non-notified discretionary classification, as well as the subsequent government proposal (in December) to classify exploratory drilling for oil and gas as a non-notified discretionary activity (see Mossop, cited above); the Crown Minerals Amendment Act 2013 which reformed the Crown Mineral regime in line with the government agenda of growing the petroleum and minerals sectors in New Zealand both on and offshore, and included maritime offences aimed at curbing offshore protests such as increased powers to arrest and detain protesters at sea and impose stiff penalties on them, apparently prompted by the case of *New Zealand Police v Teddy* [2013] NZAR 299 (HC) (see Mossop, cited above).

6 See Josephine Toop "International Environmental Law" (2012) 10 NZYIL 225 at 226.

7 See Hon Tim Groser "New Zealand commits to 2020 climate change target" (press release, 16 August 2013).

8 See New Zealand Ministry of Foreign Affairs and Trade "New Zealand's post-2012 mitigation target" <www.mfat.govt.nz>.

9 See Hon Tim Groser "Minister welcomes international climate change negotiators" (press release, 10 September 2013).

10 See Hon Tim Groser "Minister to visit Warsaw for Climate Change Negotiations" (press release, 15 November 2013). For more on 'the Friends' Warsaw side event see New Zealand Ministry of Foreign Affairs and Trade "Friends of Fossil Fuel Subsidy Reform" <www.mfat.govt.nz>.

of outcomes including decisions on the Green Climate Fund and Long-Term Finance, the Warsaw Framework for Reducing Emissions from Deforestation and Forest Degradation, the Warsaw International Mechanism for Loss and Damage (to provide most vulnerable populations with better protection against detriment caused by rising sea levels and extreme weather events), and further advances on the Durban Platform including commitments to initiate or intensify domestic preparation towards a final universal climate agreement by COP-21/MOP-11 in 2015.[11]

New Zealand submitted its Sixth National Communication on Climate Change (SNC) and its First Biennial Report (FBR) to the UNFCCC in December.[12] Biennial reporting is a new UNFCCC obligation requiring additional information on new unconditional emissions reduction targets to 2020 including any accounting assumptions relevant to achieving this target, and more information on financial, technological and capacity building support to developing countries. The SNC and FRB provide a useful summary of New Zealand's (co-existing) emissions targets.[13] The first of these targets is New Zealand's first commitment period Kyoto Protocol target; a return to 1990 base year emissions (although due to land use, land-use change, and forestry (LULUCF) credits the target is effectively higher than 1990 emission levels). The second is the aforementioned unconditional target announced in August; to reduce greenhouse gas emissions to 5 per cent below 1990 levels by 2020 under the UNFCCC rather than the Kyoto Protocol. The third target is New Zealand's pledge under the Copenhagen Accord of a 10-20 per cent reduction in emissions below 1990 levels by 2020, which is conditional on a comprehensive global agreement with five requirements. These requirements are: that the agreement sets the world on a path to limit temperature rise to no more than two degrees Celsius, developed countries make comparable efforts to New Zealand, advanced and major emitting developing countries take action commensurate with their respective capabilities, there is an effective set of rules for LULUCF, and there is full recourse to a broad and efficient international carbon market. New Zealand's final target is a long-term target of a 50 per cent reduction in net greenhouse gas emissions from 1990 levels by 2050; dubbed '50 by 50'.[14] New Zealand aims to meet these targets through a combination of domestic emissions reductions, removal of carbon from

11 Further information about COP-19 and MOP-9 outcomes is available at <http://unfccc.int/meetings/warsaw_nov_2013/meeting/7649.php>.

12 The Sixth National Communication on Climate Change [SNC] is available at <http://unfccc.int/files/national_reports/annex_i_natcom/submitted_natcom/application/pdf/sixth-national-communication_20131220[1].pdf>. The First Biennial Report [FBR] can be found at <https://unfccc.int/files/national_reports/biennial_reports_and_iar/submitted_biennial_reports/application/pdf/br1_nzl_2014.pdf>.

13 SNC, above n 12, see Executive Summary at 13 and 61-62. FBR, above n 12, at 42-45.

14 See also Ministry for the Environment "Gazetting New Zealand's 2050 Emissions Target" <www.mfe.govt.nz>. For more information on New Zealand targets see also Climate Change Information New Zealand "New Zealand's emissions reduction targets" <www.climatechange.govt.nz>.

forests, participation in international carbon markets, and surplus achieved during the first commitment period of the Kyoto Protocol.[15] Drawing upon *New Zealand's Greenhouse Gas Inventory 1990-2011*,[16] which was also submitted to the UNFCCC in 2013, the SNC and FBR reported that New Zealand's total emissions had increased from 59.6 million tonnes of carbon dioxide equivalent (Mt CO2-e) in 1990 to 72.8 Mt CO2-e in 2011, and net emissions had increased from 31.5 Mt CO2-e in 1990 to 59.3 Mt CO2-e in 2011. New Zealand's net emission estimates are lower than those for its gross emissions due to the inclusion of the LULUCF sector under the UNFCCC's accounting rules and the fact that a considerable amount of New Zealand's land is covered by forests. The SNC and FBR also reported that the two largest contributors to New Zealand's emissions profile were agriculture (47.2 per cent) and energy (42.6 per cent). New Zealand's agricultural emissions profile is unusual since the average in other developed countries for agriculture is around 12 per cent. Carbon dioxide and methane respectively contributed 45.5 per cent and 37.1 per cent of total emissions, followed by nitrous oxide (14.7 per cent), and hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafuoride (SF_6) (2.7 per cent). SCR and FBR also reported, inter alia, that around three-quarters of New Zealand's electricity generation is from renewable sources, primarily hydro generation, and that New Zealand is on track to meet its first commitment period Kyoto Protocol target with a projected surplus (based on the April 2013 *Net Position* report) of 29.6 million units (but see the revised surplus as of December 2013 later in this report).

New Zealand co-hosted the Pacific Energy Summit with the European Union in March. The summit was held in Auckland, New Zealand, following two days in Tonga. It provided a forum for Pacific leaders to present energy plans and seek donor and private sector support and for participants to showcase innovative projects and technology in the energy sector.[17] New Zealand officials, in conjunction with Pacific nations and development partners, compiled a prospectus of seventy-nine renewable energy projects across the region.[18] At the summit New Zealand proposed that the Pacific region move from 5 per cent to 50 per cent renewable power generation within the next five years and committed NZD 65 million over three years towards eighteen energy projects, including solar energy infrastructure in the Cook Islands, Tuvalu and Samoa.[19] Overall, NZD 635 million was mobilised through the summit to advance more than forty renewable energy projects across the Pacific.[20] Also in 2013, the first stage

15 SNC, above n 12, see Executive Summary at 13 and 61-62.
16 The Inventory is available at <www.mfe.govt.nz>.
17 See "Pacific Energy Summit" <www.pacificenergysummit2013.com/>.
18 See Hon Murray McCully "Summit will provide major boost to renewable energy in Pacific" (press release, 20 March 2013).
19 Hon Murray McCully "Energy Summit delivering for the Pacific" (press release, 6 September 2013).
20 Hon Murray McCully "$635 million for an energy efficient Pacific" (press release, 26 March 2013).

of the New Zealand-funded renewable energy project was completed in Bamyan, Afghanistan. It will be the largest solar plant in Afghanistan and will provide solar power to 2,500 homes, businesses and government buildings.[21]

B. Biodiversity

Maui's dolphins (*Cephalorhynchus hectori maui*) are an International Union for the Conservation of Nature (IUCN) red list critically endangered subspecies of Hector's dolphins (*Cephalorhynchus hectori*), which are found only in New Zealand. Estimates suggest only fifty-five dolphins over one year old remain, and the population is declining each year. In June, the Scientific Committee of the International Whaling Commission (IWC) reiterated its "extreme concern about the survival of Maui's dolphin" and recommended that "highest priority should be given to immediate management actions that will lead to the elimination of bycatch of Maui's dolphins. This includes full closures of any fisheries within the range of Maui's dolphins that are known to pose a risk of bycatch of small cetaceans".[22]

New Zealand participated in the sixteenth conference of the parties to CITES (COP-16) in Bangkok, Thailand in March. New Zealand submitted a proposal for greater protection for New Zealand green geckos (*Naultinus spp*). Over the past few years, populations have declined due to heavy poaching and smuggling. New Zealand's proposal was adopted by consensus by COP-16. Nine species of New Zealand geckos originally listed in Appendix III were transferred to Appendix II, making the export of wild geckos from New Zealand for overseas trade without the proper authority illegal, and increasing the ability of authorities to investigate and makes seizures. New Zealand also intends to introduce tougher penalties for smugglers caught on New Zealand shores.[23]

C. Hazardous Substances

In October, New Zealand signed the Minamata Convention on Mercury in Japan. The Minamata Convention will require parties, inter alia, to control primary mining for mercury and ban new mining, ensure environmentally sound disposal of mercury, take appropriate measures to phase out manufacture, import and export of specific mercury processes and products, control mercury emissions and releases, and reduce or eliminate gold mining that uses mercury. New Zealand differs from many other countries because it has significant natural emissions of mercury from geothermal and volcanic

21 Hon Murray McCully "First stage of Bamyan energy project complete" (press release, 30 October 2013).

22 Report of the Scientific Committee of the IWC, Annual Meeting 2013 <www.mauisdolphin.com> at 14.3.2.1.

23 Hon Nick Smith "Green geckos get greater international protection" (press release, 15 March 2013).

activity. These emissions are not part of the Convention. The Minamata Convention will enter into force when fifty states have ratified it, which is expected to occur in 2016 or 2017.[24]

III. National Developments

A. Climate Change

As usual, *Net Position* forecasts were released in 2013. These forecasts track New Zealand's emissions against its Kyoto Protocol target. The actual surplus or deficit of emissions units will be confirmed once the true-up process has been completed which is likely to occur in 2015 or 2016. The April 2013 *Net Position* projected that New Zealand will have a surplus of 29.6 million units over the first commitment period of the Kyoto Protocol. By December, however, the net position had been revised to a 95.4 million unit surplus, and using carbon prices at that time the worth of this surplus sat at NZD 51 million.[25]

As noted in last year's report, a number of significant changes to the New Zealand Emissions Trading Scheme (NZETS) were made in 2012 to slow implementation of the scheme and make it "more business-friendly".[26] Among other things, the half obligation (whereby participants need only surrender one emission unit for every two tonnes of emissions) was extended with no set end date and applied to all non-forestry sectors upon entering the scheme, and the phase-out of industrial allocation was suspended until non-forestry sectors face full surrender obligation.[27] By contrast, 2013 was a relatively quiet legislative year. As will be discussed below, the synthetic greenhouse gases (SGG) and waste sectors assumed obligations and a handful of regulations made small adjustments to the scheme. Late in 2013, New Zealand also announced plans to restrict the use of Kyoto Protocol emission units within the NZETS.

The SGG that are included in the NZETS are HFCs, PFCs, and SF_6. From 1 January, those importing and manufacturing HFC and PFC in bulk and those using SF_6 in operating electrical equipment above the prescribed threshold were required to be registered with the NZETS and to begin collecting data on their emissions for reporting in March 2014. Importers and manufacturers of SGG will then face an obligation to surrender emissions units equal to the amount of HFC and PFC they imported or the SF_6 emitted

24 Ministry for the Environment "Negotiations on Mercury Agreement" <www.mfe.govt.nz>.
25 Ministry for the Environment "New Zealand's net position under the Kyoto Protocol" available at <www.mfe.govt.nz>. See also Ministry for the Environment "Historic updates of the Kyoto Protocol financial information" <www.mfe.govt.nz>.
26 Hon Tim Groser "ETS Amendment Bill passes first reading" (press release, 23 August 2012).
27 See Josephine Toop "International Environmental Law" (2012) 10 NZYIL 225 at 229-230.

through use over the 2013 calendar (the units are due in May 2014). The rest of the SGG sector, which does not have an obligation to surrender emissions units under the NZETS, faced a SGG levy from 1 July 2013. Importers of HFC and PFC in goods and motor vehicles are now obliged to pay a levy linked to the price of carbon and updated annually. The Climate Change (Synthetic Greenhouse Gas Levies) Regulations 2013 set out the motor vehicle classes covered under the levy, the products of goods that are covered under the levy, the information to be collected, and the corresponding levy rates.

In the waste sector, those who operate landfills are now obliged to report on emissions and surrender emissions units, although small and remote landfills have been granted an exemption from these obligations (effective 1 January) and emissions from wastewater treatment are not included in the scheme. Landfill operators who are not exempt are obliged to collect data in order to calculate and report their emissions over the 2013 calendar year, submit an emissions return in March 2014, and surrender emission units in May 2014. The Climate Change (Waste) Amendment Regulations 2013 updated the default emissions factor used in calculating emissions from operating disposal facilities so that it aligns with new global warming potentials.

The government also promulgated a number of climate change regulations to adjust the scheme in relation to calculation methodologies, definitions, thresholds and baselines.[28]

In December, the acting Minister for Climate Change Issues Simon Bridges announced decisions to restrict the use of Kyoto Protocol emission units within the NZETS from mid-2015. The reasons cited included the restrictions on New Zealand's ability to trade Kyoto units after 2015 stemming from Doha decisions in 2012 and "the lack of action on international markets at the recent Warsaw negotiations" – conditions making "it preferable for our ETS to operate with restricted access to these markets for the time being".[29] Participants will be allowed to use Kyoto Protocol first commitment period certified emission reduction units, emission reduction units, and removal units to account for their surrender obligations up until 31 May 2015, after which time these units will no longer be eligible for surrender and New Zealand units will need to be used to meet surrender obligations.

There was also some national case law relating to climate change in 2013. By way of background, the Resource Management Act 1991 was amended in 2004 to direct local authorities, in the purpose section, "not to consider the effects on climate change of discharges into air of greenhouse gases."

28 See the Climate Change (Stationary Energy and Industrial Processes) Amendment Regulations 2013, the Climate Change (Liquid Fossil Fuels) Amendment Regulations 2013, the Climate Change (Eligible Industrial Activities) Amendment Regulations 2013, the Climate Change (Eligible Industrial Activities) Amendment Regulations (No 2) 2013, the Climate Change (Unique Emissions Factors) Amendment Regulations 2013, the Climate Change (General Exemptions) Amendment Order 2013 and the Climate Change (General Exemptions) Amendment Order (No 2) 2013.

29 Hon Simon Bridges "Decisions on Kyoto Protocol emission units" (press release, 6 December 2013).

However, this was not explicitly carried through to the operative provisions which led to a dispute heard in the Supreme Court in 2013 (*West Coast ENT Inc v Buller Coal Limited* [2013] NZSC 87). Buller Coal Limited seeks to mine coal on the Denniston Plateau on the west coast of the South Island. It wants to export the coal to China and India for use in the steel manufacturing industry which will result in greenhouse gas emissions. West Coast ENT (ENT) and the Royal Forest and Bird Protection Society argued that consent authorities are required to take into account the effects on climate change of the use of coal. The majority of the Supreme Court rejected this, stating ENT's interpretation cannot be sustained when the relevant section is interpreted in a purposive fashion in the context of the statute as a whole,[30] and they dismissed the appeal. Among other things, the court noted that the coal will not be subject to the NZETS provided it is exported because the NZETS focuses only on New Zealand greenhouse gas emissions.[31] Chief Justice Elias (dissenting) would have allowed the appeal, considering that "the legislation, properly construed in accordance with its terms, purpose, scheme, and legislative history does not justify an interpretation … which excludes the consideration of the effects on climate change of the activities for which consents are required under the Resource Management Act".[32]

New Zealand courts also heard a case in 2013 by a citizen of Kiribati relating to refugee and/or protected person status due to sea level rise associated with climate change (*AF (Kiribati)* [2013] NZIPT 80041; on appeal: *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC 3125). Kiribati is an island group in the Pacific Ocean with a largely subsistence society. The case describes how these islands are no more than three metres above sea level. Salt water intrusion onto the land has made it difficult to grow crops and the sea walls that exist are breached regularly during intense storms. Wells are being infiltrated by salt water, coastal erosion is occurring during high tides, and land is submerged on some islands often three or four times a month making the land uninhabitable. The international instruments considered were the Convention Relating to the Status of Refugees,[33] the International Covenant on Civil and Political Rights[34] and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.[35] While the courts accepted the factual information about the status of Kiribati, the applicant was unsuccessful, inter alia, because

30 *West Coast ENT Inc v Buller Coal Limited* [2013] NZSC 87 at [153].
31 At [101].
32 At [94].
33 Convention Relating to the Status of Refugees 189 UNTS 150 (opened for signature 18 July 1951, entered into force 22 April 1954).
34 International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976).
35 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1465 UNTS 85 (opened for signature 10 December 1984, entered into force 26 June 1987).

the effects of environmental degradation were faced by the population of Kiribati indiscriminately and the risk of a violation of a human right was not sufficiently imminent.

B. Biodiversity

It will be recalled that in 2012 New Zealand took some interim steps toward Maui's dolphin protection.[36] Maui's dolphin are an IUCN red list critically endangered subspecies of Hector's dolphin found only in New Zealand. Following the June 2013 recommendations of the Scientific Committee of the IWC, discussed earlier, further domestic regulation was introduced in 2013 to extend the set net fishing ban by 350 square kilometres from Pariokariwa Point and Waiwhakaiho River between two and seven nautical miles offshore.[37] A threat management plan was also introduced including a set net ban out to two nautical miles between Pariokariwa Point and Hawera and mandatory observer coverage in the area between two and seven nautical miles. The New Zealand Ministry for Primary Industries is to provide NZD 400,000 for the ongoing cost of independent observers.[38]

A National Plan of Action for the Conservation and Management of Sharks was also launched in 2013, in line with the UN Food and Agriculture Organization International Plan of Action for Sharks, which has the objective of ensuring the conservation and management of sharks and their long-term sustainable use.[39]

C. Precautionary Principle

Finally, 2013 saw some national case law relating to the precautionary principle in the New Zealand High Court (*Environmental Defence Society Inc v New Zealand King Salmon* [2013] NZHC 1992). By way of brief background, changes to the Marlborough Sounds regional plans were made in 2013 following a King Salmon proposal for plan change and a Board of Inquiry consideration. These changes meant that marine farming in certain locations moved from a prohibited activity to a discretionary activity subject to resource consent. Four new consents for salmon farms were granted. The appellants (Sustain Our Sounds and the Environmental Defence Society) argued, inter alia, that the precautionary approach prevents an activity where there is scientific uncertainty as to its adverse effects and that if this approach had been upheld the request for the plan change would have been rejected.[40] Sustain Our Sounds and the Environmental Defence Society also argued

36 See Josephine Toop "International Environmental Law" (2012) 10 NZYIL 225 at 231.

37 Marine Mammals Protection (West Coast North Island Sanctuary) Amendment Notice 2013.

38 Hon Nick Smith and Hon Nathan Guy "Additional protections and survey results good news for dolphins" (press release, 25 November 2013).

39 Ministry for Primary Industries "National Plan of Action for the Conservation and Management of Sharks 2013" <www.mpi.govt.nz>.

40 *Environmental Defence Society Inc v New Zealand King Salmon* [2013] NZHC 1992 at [76].

that the Board had confused the precautionary approach with an adaptive management approach, and that where the precautionary approach required a decision maker to find against an application this could not be lessened by anticipating that the impact of scientific uncertainty could be managed by an adaptive management approach.[41] King Salmon argued that the board did take the precautionary principle into account, the extent to which it had regard to it was a matter for the board, and that the utilisation of adaptive management as part of a precautionary approach was acceptable.[42] The court considered these arguments[43] and found that "it is for the decision-maker in each factual situation to assess the nature and possible extent of presently unquantified adverse effects, against the prospects that such adverse effects could be controlled sufficiently by an adaptive management regime", and that "the weight given by the Board to the precautionary approach was a matter within its decision-making discretion, and the weight it has decided to give it cannot constitute an error of law".[44] The appeals were dismissed and the decision to approve four new salmon farms upheld. Following the decision, Sustain Our Sounds and the Environmental Defence Society applied for leave to appeal to the Supreme Court.

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41 At [77].
42 At [79].
43 At [80-85].
44 At [83] and [85].