

Investigating the future of conservation: **The case of stewardship land**

August 2013



*Parliamentary Commissioner
for the **Environment***
Te Kaitiaki Taiao a Te Whare Pāremata

Acknowledgements

The Parliamentary Commissioner for the Environment would like to express her gratitude to those who assisted with the research and preparation of this report, with special thanks to her staff who worked so tirelessly to bring it to completion.

Photography

Cover: Mavora Park Conservation Area in Southland. This area is stewardship land and part of the Te Wāhipounamu World Heritage Area. Courtesy of Jill Ferry.
This document may be copied provided that the source is acknowledged.

This report and other publications by the Parliamentary Commissioner for the Environment are available at: **www.pce.parliament.nz**

Contents

Commissioner's overview	5
1 Introduction	7
1.1 What is stewardship land?	8
1.2 Why investigate stewardship land?	12
1.3 What comes next	13
1.4 What this report does not cover	13
2 The evolution of the conservation estate	15
2.1 Protecting our special lands	16
2.2 The Department of Conservation is created	19
2.3 The origin of stewardship land	21
3 Stewardship land today	23
3.1 Changes in stewardship land over time	24
3.2 Where is stewardship land today?	26
3.3 The value of stewardship land	30
4 How is stewardship land managed today?	31
4.1 Managing stewardship land on the ground	32
4.2 Allowing commercial use of stewardship land	33
4.3 Selling or swapping stewardship land	35
4.4 Reclassifying stewardship land	37
5 Case studies: Two controversial land swaps	41
5.1 The Mōkihinui proposal	41
5.2 The Crystal Basin proposal	44
6 Swapping and reclassifying stewardship land	47
6.1 Swapping stewardship land	48
6.2 Reclassifying stewardship land	51
7 Conclusions and recommendations	57
Notes	61

Commissioner's overview

To a large extent, we as New Zealanders find our identity in our relationship with this beautiful land of ours. The Māori word for land - whenua - also means placenta and there can be no stronger image than this denoting a connection to the land. Many New Zealanders reaching back into their family histories find connections with particular places.

This report is about 'stewardship land' – a category of conservation land that makes up about one-third of the land managed by the Department of Conservation. I feel a personal connection with one significant area of stewardship land – one of my great grandfathers built the sheepyards at St James Station in North Canterbury in the 1870s. Today it is the St James Conservation Area. But it is stewardship land, and as such is one of the many areas on the conservation estate with the weakest legal protection.

The origin of stewardship land lies in the creation of the Department of Conservation in 1987. As part of the reorganisation of Crown land, the Government transferred responsibility for large areas of land which were not seen to be commercially valuable to the newly-formed, and protection-focused, conservation department. The department was to act as steward of the land until its destiny was determined.

The original intent of the Government in 1987 was to assess the conservation value of different areas of stewardship land. Each area would then be reclassified into the appropriate category of conservation land (such as a reserve or ecological area), or, if it had little or no conservation value, be taken out of the conservation estate.

That systematic assessment has never been done. Some stewardship land has been reclassified, and a small amount has been sold. But all conservation land that is newly acquired and not reclassified, remains as stewardship land. There may be more stewardship land now in the conservation estate than in 1987.

There are two ways in which stewardship land differs from other land in the conservation estate. First, large areas can be swapped for areas of private land. Second, it need only be managed so that its "*natural and historic resources are protected*", whereas other categories of conservation land have more specific management criteria.

There are problems associated with both these differences. The direction and guidance for land swaps is based on law and policy which is inadequate for anything other than minor boundary changes. And the purpose for the inclusion of any area of stewardship land within the conservation estate is left vague and undefined, signalling that it is of low conservation value.

Taken together, these differences lead to the legal protection of stewardship land being weaker than that of other types of conservation land. This would not matter if the conservation value of all land in this category was low, but that is not the case. For instance, some areas of stewardship land were purchased and added to the conservation estate, because of their high conservation value. Others have recently been identified by departmental scientists as being of high biodiversity value.

This report contains two case studies that illustrate the difficulties that can arise from the failure to confront the issues associated with stewardship land. Both involved areas that were considered by officials to have high conservation value, yet they had been left as stewardship land. Consequently, commercial operators were able to propose land swaps.

The first case study is Meridian Energy's application to build a hydroelectric dam on the Mokihinui River on the West Coast – an application that has since been withdrawn. The second case study is the acquisition of an alpine basin (Crystal Basin) for the expansion of a skifield.

Both cases attracted a great deal of controversy. The land swaps – proposed in the first case and actual in the second case – were predicated on the basis that they would provide a net conservation benefit. And both cases highlight that there is work to be done before the public can have confidence in such deals.

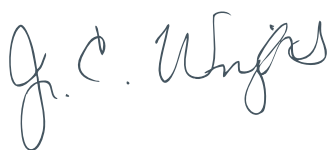
For instance, in the Mokihinui case, the conservation value of the river itself could not feature in the assessment of net conservation benefit because the riverbed is not 'administered' by the Department of Conservation. This alone made the assessment meaningless.

In the Crystal Basin case, the forested Banks Peninsula gully that was swapped for this alpine basin was already protected under the district plan. But under the law as it stands, land swaps need only lead to a net conservation benefit for the *conservation estate*. That this coastal lowland forest was already protected was deemed irrelevant.

Over the years, concern about stewardship land has been expressed from time to time, notably by the New Zealand Conservation Authority. Since more commercial enterprises look likely to take place on the conservation estate, getting ahead of the game by resolving these issues could potentially save both heated arguments and wasted resources.

In particular, the development of clear principles and processes for assessing net conservation benefit is required. Because it represents the public, the Conservation Authority is well-placed to play an important role here. My staff and I will also continue to think about this challenge. It is a worthwhile goal to pursue, and in my opinion could yield many benefits. Right now, our conservation legislation is not up to the task of dealing with this complex problem.

In the meantime we need to protect our most precious conservation areas that lie on the map as stewardship land. My recommendations therefore emphasise the need to make some headway. As with many environmental issues it is not straightforward, nor black and white, but I do believe that something must be done.



Dr Jan Wright
Parliamentary Commissioner for the Environment



1

Introduction

New Zealand's protected conservation land is vast and varied. Making up a third of the country it includes rain-drenched bush, mountains uplifted high, tussock plains, remote beaches, and giant glaciers meandering down misty U-shaped valleys.

We like to think that these places are permanent and that a hundred years from now our descendants will still be amazed by their beauty and variety. Ours is a country with little built heritage, but a stunning natural heritage.

Many of what were once iconic places are now gone. We humans are not responsible for destroying the Pink and White Terraces – once a contender for the title of the Eighth Wonder of the World. But we are responsible for the loss of others, such as the thermal wonderland of Ōrākei Kōrako on the banks of the Waikato, inundated by our quest for hydroelectricity.

The permanence and protection of our conservation land now rests on our shoulders. This report is about a category of conservation land known as 'stewardship land'. An artefact of history means areas of stewardship land are viewed and protected differently from other conservation land, regardless of whether or not this is justified.

1.1 What is stewardship land?

In this report the land that is managed by the Department of Conservation (DOC) is called the 'conservation estate'.¹ There are many categories of land in the conservation estate. These include national parks, conservation parks, wilderness areas, and so on (see Figure 1.1).

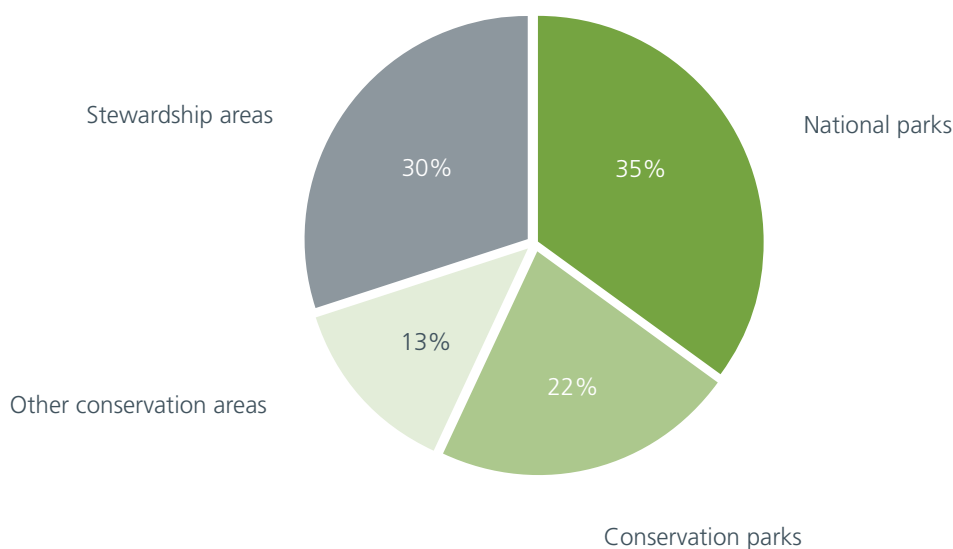
Today about one third of the conservation estate is categorised as stewardship land, totalling about 10 percent of the entire country.² Stewardship land is fundamentally different from the other categories.

All other land in the conservation estate has been given a status that reflects its value and explains why it is protected. National parks, for example, are "*held for their intrinsic worth*", with their enjoyment to be on "*nature's terms*".³ Indeed, the names of some categories such as wilderness areas and scenic reserves clearly indicate the purpose for which they are to be protected.

Stewardship land, in contrast, is a generic category; areas categorised thus are to be managed for the nonspecific purpose of protecting natural and historic resources.⁴

The word 'steward', meaning 'keeper of the hall', dates back to medieval times. The steward was the servant in the household responsible for its management. Nowadays a steward is simply someone who looks after something on someone else's behalf.

In the 1970s, the principle of stewardship began to be used to signify a responsibility to look after the environment.⁵ But long before this, the related concept of kaitiakitanga was deeply embedded in the Māori approach to environmental management.⁶



Source: DOC GIS data

Figure 1.1 Areas of different categories of land in the conservation estate.

In the 1980s, the laws and institutions governing the management of Crown land were radically reformed. Some of the land owned by the Crown was classed as valuable for production and subsequently sold or put under the control of state-owned enterprises. DOC was created to manage all protected lands.

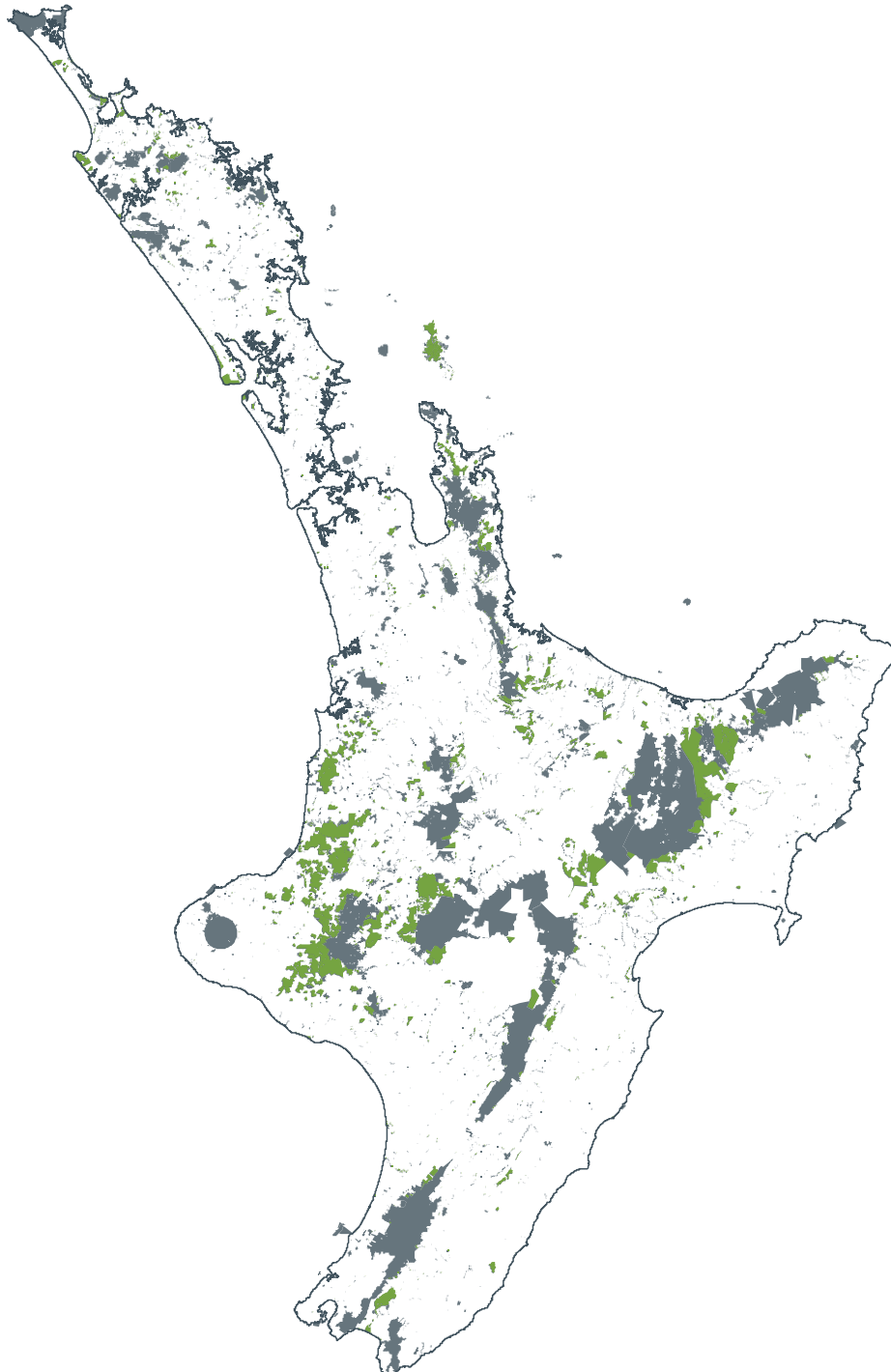
A large proportion of the land put under DOC management was denoted stewardship land. These mostly forested lands had not been protected previously, but were to be protected until their value had been assessed. After assessment, they were to be reclassified into appropriate categories of conservation land or turned over to commercial production.

Twenty-five years later, the conservation value of the great majority of stewardship land has not been assessed, and reclassified or sold. It remains in what has been described as a “*statutory holding pen*” (see Figure 1.3).⁷



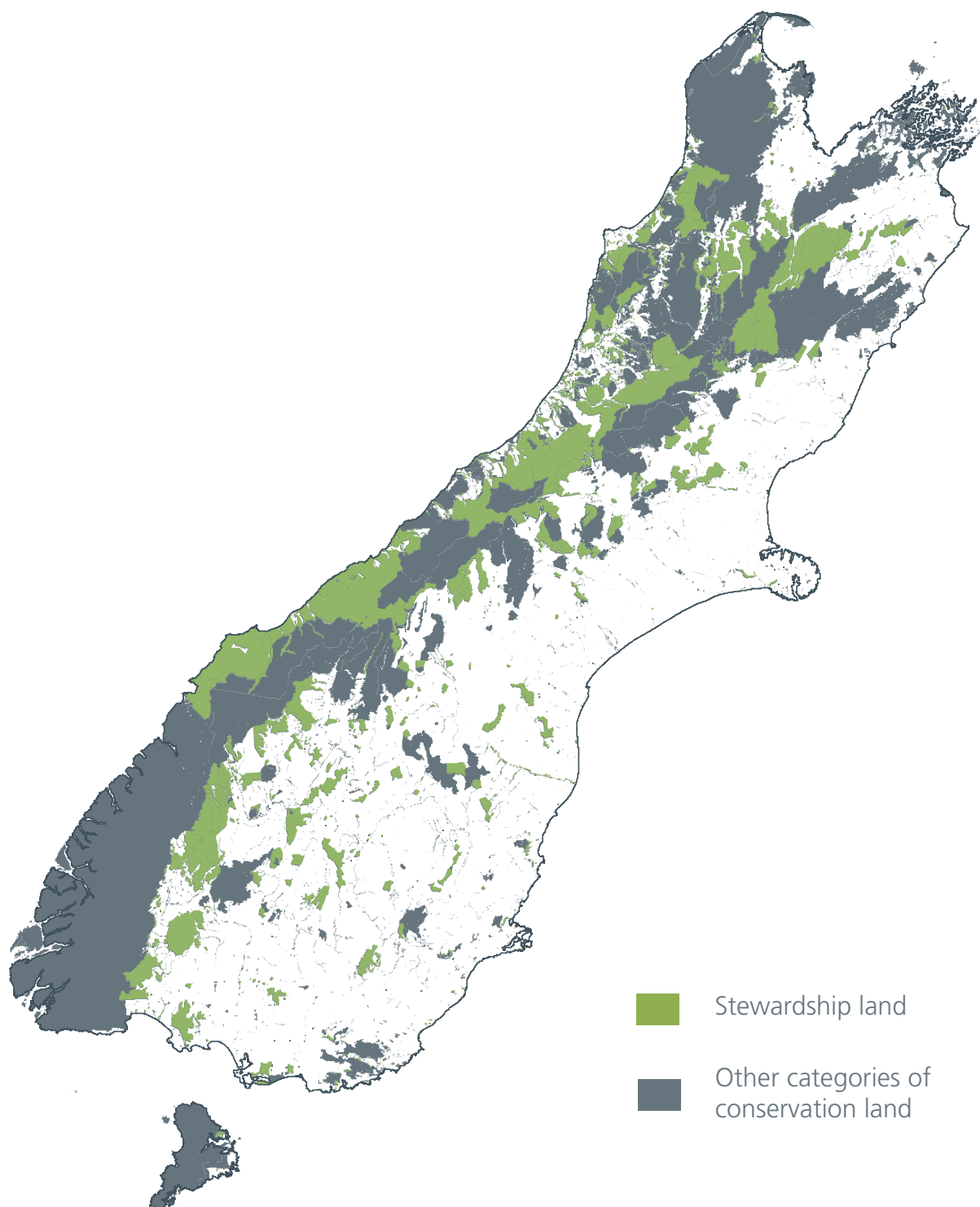
Source: R. Sanderson

Figure 1.2 View over Great Barrier Island from the top of Mt Hobson (Port Fitzroy and Little Barrier Island in background). Most of Great Barrier Island is stewardship land.



Source: DOC GIS data

Figure 1.3 Map of the conservation estate where green represents stewardship land, and the grey represents national parks and other categories of conservation land.



1.2 Why investigate stewardship land?

The Parliamentary Commissioner for the Environment is an independent Officer of Parliament, with functions and powers granted by the Environment Act 1986. Her role allows a unique opportunity to provide Members of Parliament with independent advice in their consideration of matters that may have impacts on the quality of the environment.

This investigation has its origins in two previous investigations by the Commissioner, in which it became clear that there were concerns about stewardship land.

The first was the 2010 investigation into mining on conservation land that followed the controversial proposal to open up some Schedule 4 land for mining.⁸ The second was the 2011 investigation into the conflict that can occur between the protection of a wild and scenic river and its use for generating hydroelectricity.⁹ Both led to major questions about stewardship land.

How is it that New Zealand's second largest category of conservation land can have such an ill-defined purpose? Why has most stewardship land been left in a 'holding pen' for 25 years? And in relation to the proposal for a hydroelectricity dam on the Mōkihinui River, why was DOC opposing the proposal when there had been ample opportunity to reclassify the stewardship land through which the river flows?

The different perspectives of the value and protection of stewardship land periodically lead to controversy over how it is managed. This investigation will hopefully shed some light on a confused and confusing aspect of the protection of our beautiful country for future generations.

To assist with understanding the history of the origin of stewardship land, reports were commissioned from Hon Philip Woollaston and Guy Salmon, two people who were significantly involved in the lead up to and passage of the Conservation Act.¹⁰ Both reports are available on the PCE website, www.pce.parliament.nz.

1.3 What comes next

The remainder of this report is structured as follows:

Chapter 2 tells the story of how stewardship land was created as part of a major reform of conservation land, laws, and institutions in the 1980s.

Chapter 3 describes what has happened to stewardship land since the Department of Conservation was formed.

Chapter 4 explores how stewardship land is managed today.

Chapter 5 contains two case studies of recent proposals to swap areas of stewardship land for other land.

Chapter 6 looks closely at the policies and processes associated with land swaps and land reclassification.

Chapter 7 contains conclusions and recommendations from the Commissioner.

1.4 What this report does not cover

This report is about the management and protection of stewardship land. This report does not cover:

- an analysis of 'net conservation benefit', biodiversity offsetting, compensation or other methods of weighing conservation gain against conservation loss.
- the conservation value of other categories of land in the conservation estate.
- protected areas in the marine environment.
- Treaty of Waitangi settlements that involve conservation land.



2

The evolution of the conservation estate

“The time has arrived in the history of our colony when our scenery should be preserved, when the historic and beautiful places should be for all time conserved.” Premier Richard Seddon, 1903¹¹

The New Zealand landscape that confronted the first European settlers was a very different one from that of the present day. Indeed its transformation had already begun with the arrival of Polynesians hundreds of years earlier. The changes playing out across the landscape led to efforts to conserve and protect what remained. Just over 80 years after Premier Seddon introduced the Scenery Preservation Bill in 1903, a government department with the overall responsibility for protection of New Zealand's natural heritage was created.

This chapter provides a brief history of nature conservation in New Zealand. It is divided into three sections.

The first section describes how different reasons for conserving our natural heritage arose over time.

The second section describes how public sector reforms in the 1980s led to the passage of the Conservation Act and the creation of the Department of Conservation.

The third section describes the origin of stewardship land as a category of land in the conservation estate.

2.1 Protecting our special lands

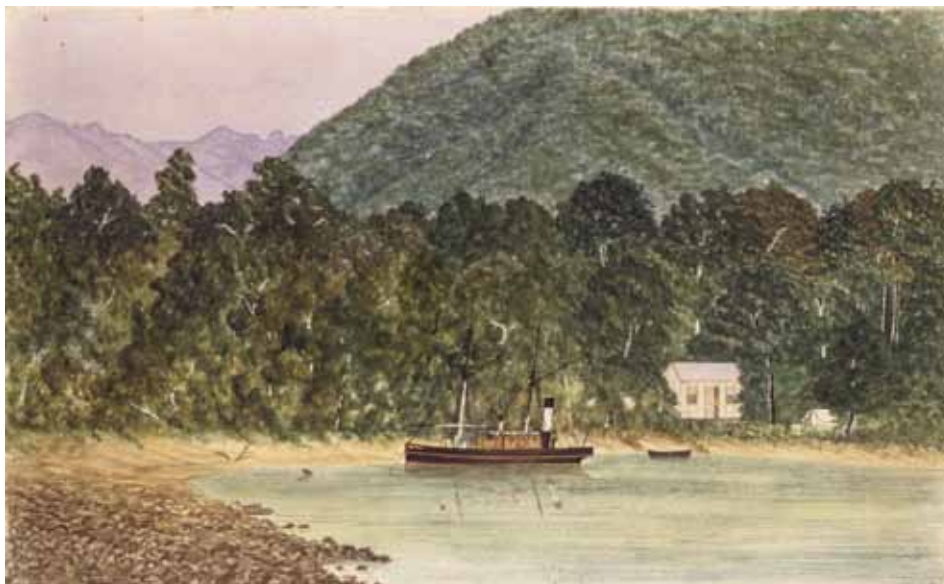
The practice of setting aside certain areas to protect them from use has a long history in New Zealand.

Māori see themselves as descendants of the union between Papatūānuku, the earth mother, and Ranginui, the sky father. The relationship of Māori to the land is fundamental to their identity – Māori are tangata whenua – people of the land. Their relationship with the land has evolved over centuries.

When Polynesians arrived in Aotearoa, they encountered a very different environment and inevitably altered it. Large areas of forest were burned, kiore devastated populations of some small animals and birds, and some bird species were hunted to extinction. But over time, customs to protect and care for the environment developed. One such custom is rāhui – restricting access to, or prohibiting taking fish and other resources from, particular areas.

"Tipene O'Regan has argued that Māori spent their first 500 years here learning to live with a temperate environment and the next 500 learning to put it back together".¹²

Early European settlers arrived with the aim of reforging New Zealand in the image of the Britain that they left behind. Felling and burning forest, and bringing in familiar plants and animals resulted in rapidly changing landscapes and ecosystems. But this was not of concern to most people – the idea that 'weaker' native species would (and should) naturally disappear when 'superior' European species were introduced was widespread.



Source: Welch, Joseph Sandell, 1841-1918 :Martins Bay, Otago. Jamestown gravel cove, Lake McKerrow. [February 1870]. Welch, Joseph Sandell, 1841-1918 : [South Island sketches, 1870-1888]. Ref: A-120-013-1. Alexander Turnbull Library, Wellington, New Zealand. <http://natlib.govt.nz/records/22784393>

Figure 2.1 Stewardship land surrounds the historic settlement of Jamestown (pictured here, 1870). The draft Southland Conservation Management Strategy proposes that this land is reclassified into the Fiordland National Park.

An early conservation concern of the pioneers was the sustainability of the supply of native timber. Premier Julius Vogel, was an early advocate of protecting forests:

*"New Zealand entirely unsettled – New Zealand in its old wild state – might be very much more valuable, clothed with forest, than New Zealand denuded of forest and covered with public works constructed at enormous cost and with enormous labour."*¹³

Nature reserves were created as early as the 1870s. The first national park – Tongariro – was created in 1887, followed by Egmont at the turn of the century, and Arthur's Pass in 1929. New Zealand's birds are especially vulnerable to introduced predators, and three island reserves for birds – Little Barrier, Resolution, and Kapiti – were created in the 1890s.¹⁴



Source: Nuytsia(Flickr)

Figure 2.2 Mt Ngauruhoe in Tongariro National Park. Tongariro was New Zealand's first national park.¹⁵

In the late 19th century the aesthetics of wilderness and the relationship between 'man' and nature became of widespread interest among European intellectuals. In New Zealand this fed into a growing movement for the preservation of scenery.

The extraordinary Pink and White Terraces had already alerted the world to New Zealand as a tourist destination. In 1901, the Government created the Department of Tourist and Health Resorts, and two years later passed the Scenery Preservation Act.

Over time, other reasons for protecting New Zealand's wilderness began to develop. Mountaineering, tramping, hunting, fishing, and skiing became popular recreational activities. The role of forests in conserving soil and protecting water catchments became increasingly recognised and valued.

In the 1950s, the Department of Lands and Survey began to consolidate the national parks into a network, and the New Zealand Forest Service began to establish forest parks with recreation and soil conservation in mind. In 1954, the first forest park – Taranaki Forest Park near Wellington – was created. In contrast to national parks, forest parks were multipurpose – managed for logging, water supply, soil conservation, and recreation. A network of 'ecological areas', chosen to represent different native forest ecosystems was established within state forests.

With the rise of the modern conservation movement in the 1970s, two other reasons for conserving nature gained prominence. The first was ecological value – the importance of preserving unique ecosystems, species, and habitats. The second, intrinsic value – is closely linked; it is the concept that nature and biodiversity are inherently valuable, regardless of whether or not humans see them to be so.

Over the years many different categories of protected lands had been created for different reasons. There were national parks and reserves under the control of the Department of Lands and Survey. There were forest parks and ecological areas under the control of the New Zealand Forest Service. And there were other areas of Crown land that had significant conservation value.

None of the agencies of the state that managed Crown land were focused solely on conservation. Pressure grew for the creation of a new department that would enable a more strategic approach to conservation and give a stronger voice to nature.



Source: Parliamentary Commissioner for the Environment archives

Figure 2.3 The Glasgow Range, near the Mokihinui River on the West Coast was unprotected crown land in 1987 that became stewardship land.

2.2 The Department of Conservation is created

By the 1980s there were a number of different types of protected land areas, with most administered by the Department of Lands and Survey and the New Zealand Forest Service. This was all about to change.

The 1980s was a time of radical change across the public sector with free market reforms leading to extensive restructuring and deregulation. One fundamental concept underlying the reforms was the separation of productive enterprises from 'public goods'.

No longer did it seem to make sense for the Department of Lands and Survey to manage productive farms as well as the public goods of national parks and reserves. Nor did the management of commercial forestry operations by the Forest Service seem to fit with the management of multipurpose forest parks and ecological areas.

Conservation organisations urged the Government to establish a single nature conservancy department, and in 1985 work began to design what was to become the Department of Conservation. The new department was to manage all central government protected lands – the conservation estate – and to act as an advocate for conservation.

The Minister of Conservation, Hon Russell Marshall introduced the Conservation Bill in Parliament on 11 December 1986.

“This Bill...brings together under a single new department of State - the Department of Conservation - the management of land held for the public of New Zealand, other than that being used primarily for commercial purposes.”¹⁶

Much of the preparatory work had involved deciding what areas of Crown land should be given to DOC to protect, and what areas should be handed over to the new state-owned enterprises.

In general, if land was predominantly of commercial value, it went to the relevant newly-established corporation, almost all to Landcorp and Forestcorp.¹⁷ Land that already had a specific protective classification - national parks, reserves, forest parks, ecological areas - was transferred to the new conservation department. Land in dispute went to Ministers for a final decision on its allocation.

Only three months after the introduction of the Bill, the Department of Conservation came into being with the passage of the Conservation Act on 1 April 1987.¹⁸



Source: Wendy Gibbs

Figure 2.4 Conservation land on the shore of Lake Brunner on the West Coast is classified as scenic reserve while the lake bed is stewardship land.

2.3 The origin of stewardship land

Much of the land given to the newly-created Department of Conservation was categorised as 'stewardship land'. This was land that did not have a specific protective classification (such as national park); nor was it seen to have productive value.¹⁹

The Minister's introductory statement to the Conservation Bill in December 1986 indicated an intent that stewardship land would function, in effect, as a neutral 'land bank' – it was to be *"land for which no end use has been decided"*.²⁰ Some might be taken out of the conservation estate, and some might be reclassified into other categories of protected land.

As the Bill progressed through the House, questions were raised about the Government's intentions with regard to stewardship land. During the select committee process, a number of changes were made to the Bill that had the effect of altering the conception of stewardship land.²¹

In the Conservation Bill, stewardship land had been defined as land that was to be managed so that *"... its inherent character is largely unaltered."*²² But this was changed to a requirement for its active protection. The Conservation Act 1987 states that stewardship land is to be managed so that *"... its natural and historic resources are protected."*²³

Hon Philip Woollaston, Associate Minister of Conservation at the time, has explained what was expected to happen to stewardship land as follows.

*"The clear intention in creating stewardship areas was to protect them from development or extractive use until their conservation value could be established, the appropriate form of protection chosen...; unless of course the conservation values were found to be inadequate, when the area would be disposed of..."*²⁴

Some evaluation, reclassification, and disposal has occurred, but not the systematic elimination of the stewardship category that was originally envisaged. Stewardship land remains as a generic category to be managed for the generic purpose of protecting natural and historic resources.

Two years after the Conservation Act was passed in 1987, it was amended. One addition was a section that allowed for areas of stewardship land to be exchanged for areas of private land.²⁵ Officials at the time advised that:

*“The provision enables boundary adjustments to be made and is a useful tool to enable a speedy rationalisation of a conservation area”.*²⁶

No other changes of significance have been made to the law governing stewardship land. Today, it makes up almost one third of our conservation estate. Its value, however, has become an increasingly disputed subject, and recent use of the exchange provision for more than just boundary adjustments has proved controversial.



3

Stewardship land today

This chapter describes what has happened to stewardship land since the category was created in 1987. Some has been added, some has gone into private ownership, and some has been reclassified into other categories.

It has not been possible to find out how many hectares of land were originally categorised as stewardship land in the late 1980s. Nor is it known with any accuracy how much land has been added or removed from this category since. Today the category contains over 2.8 million hectares of land, mostly in the South Island.²⁷

Parliament's intention that stewardship land be systematically assessed, and either reclassified or sold, has not happened. Further, some valuable additions to the conservation estate also remain as stewardship land. As a result, the vast amount of stewardship land today has a broad range of value – from very high to very low.

3.1 Changes in stewardship land over time

Some stewardship land has been added

There have been three main sources of *new* stewardship land over the years.

In 1990, the Nature Heritage Fund was set up to purchase land which was considered to have high conservation value for addition to the conservation estate.²⁸ Any new conservation land is stewardship land until otherwise reclassified. The Nature Heritage Fund committee recommends appropriate classifications for this new conservation land. However some has been left as stewardship land. For instance, the 78,000 hectare St James Station in North Canterbury was purchased in 2008 for \$40 million, but still remains as stewardship land (see Figure 3.1).²⁹

In 2000, the West Coast Forest Accord was cancelled, effectively ending the logging of native forests on land owned by the Crown. Subsequently, 130,000 hectares of Timberlands West Coast forest was assessed for its conservation and commercial value. Almost all of it was deemed to be worthy of protection and added to the conservation estate. Several areas were added to existing national parks, most was classified as ecological areas or reserves, but some remains as stewardship land.



Source: Mr William Newcombe and family on the shores of Lake Guyon. Travers, William Thomas Locke, 1819-1903 : Photographs. Ref: PA7-22-04. Alexander Turnbull Library, Wellington, New Zealand.
<http://natlib.govt.nz/records/23177897>

Figure 3.1 Settlement on the shores of Lake Guyon, St James Station in 1870s. The lake is a scenic reserve but the surrounding land is stewardship.

In the 1990s, the process of reviewing the high country sheep stations leased by the Crown to farmers (tenure review) began and is still continuing. In most cases, the result has been the lower, more productive land being owned by the former lessee, and the remainder being added to the conservation estate. To date, about 656,000 hectares of mainly mountainous rock and tussock land has been placed under DOC management, with about half classified as conservation park and half left as stewardship land.³⁰

Some stewardship land has been sold or swapped

A major way in which stewardship land differs from other categories of conservation land is that it can be sold or swapped for private land. National park land cannot be sold without an Act of Parliament. Land in other categories can be sold or swapped, but must first be reclassified as stewardship land.³¹

There have been many exchanges of small areas of stewardship land for generally larger areas of private land. Thus far, these 'land swaps' (as they are known) have mostly been done to rationalise boundaries and have been non-controversial.

Some stewardship land has been reclassified

Some 'original' stewardship land has been reclassified into other categories because of its high conservation value.

One example is the Kopuatai Peat Dome on the Hauraki Plains. This 10,000 hectare area of stewardship land was listed by the United Nations in 1989 as a Wetland of International Importance.³² Subsequently, its classification was changed from stewardship land to wetland reserve.

Another example is Rakiura National Park. It is New Zealand's newest national park and covers around 85 percent of Stewart Island. About 35 percent of Rakiura was stewardship land before it was given national park status.³³

A third example is the creation of Kahurangi National Park in 1996. Eleven percent of the conservation land that was reclassified into the national park was formerly stewardship land including the 1000 Acre Plateau (see Figure 3.2).³⁴

3.2 Where is stewardship land today?

The majority of stewardship land is in the South Island. This includes two very large contiguous areas sandwiched between Arthur's Pass National Park and Mt Aspiring National Park. There are also some large areas within the Te Wāhipounamu – South West New Zealand World Heritage Area. Other areas of stewardship land in the South Island include large areas adjacent to every national park, and numerous small areas in every region.

There are pockets of stewardship land throughout the North Island, especially in Taranaki and Waikato. Particularly large areas include the Waitōtara Forest adjacent to Whanganui National Park, Tongariro Forest adjacent to Tongariro National Park, the Waioeka area between Gisborne and Ōpōtiki, and most of Great Barrier Island (see Figure 3.3).



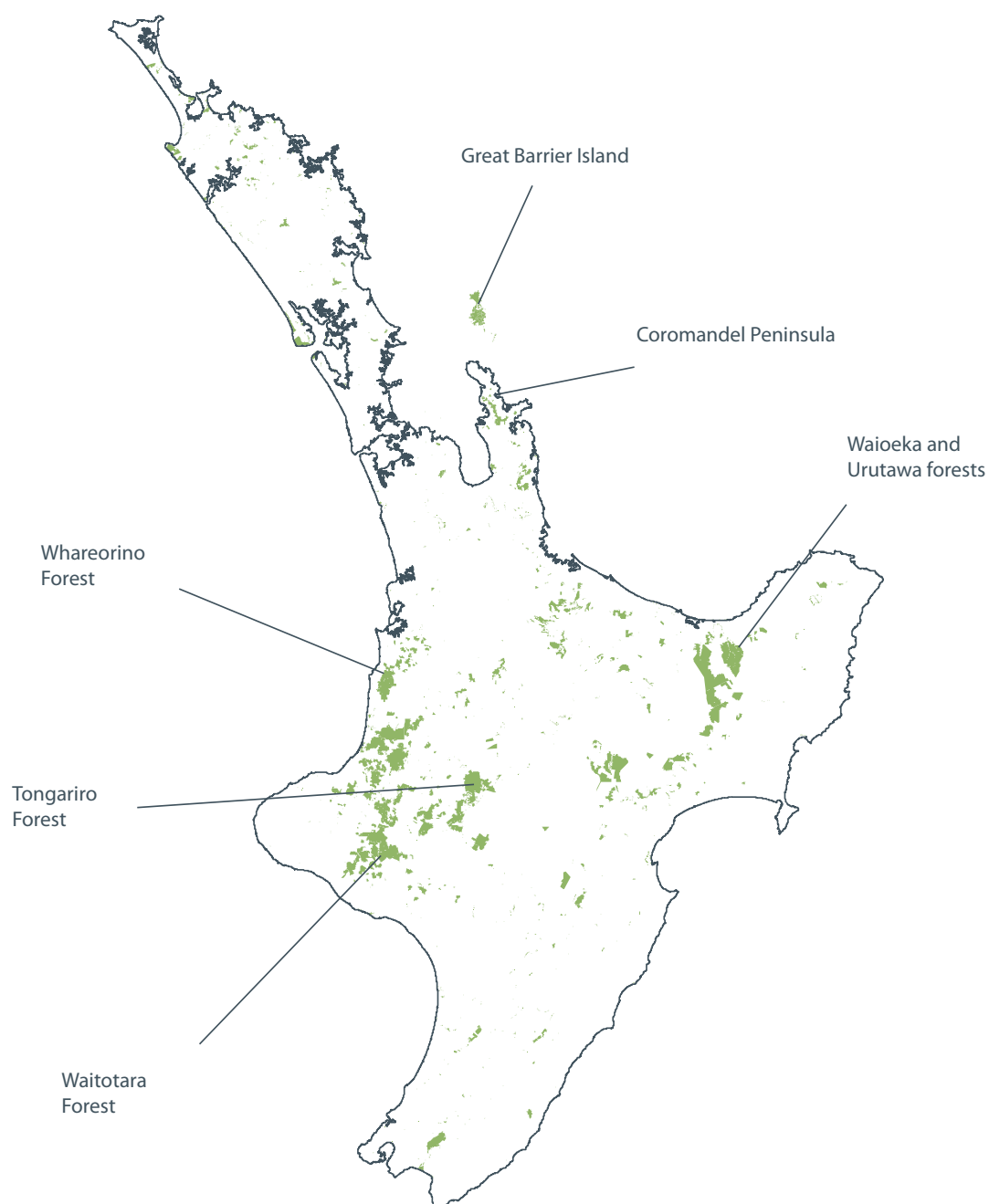
Source: Melissa Hutchison

Figure 3.2 The 1000 Acre Plateau was stewardship land before being added to Kahurangi National Park in 1996. The DOC website states that *“Landforms of the Matiri Valley are spectacular and found nowhere else in New Zealand.”*³⁵

Conservancy	All land in the conservation estate (hectares)	Stewardship land (hectares)
Northland	163,780	28,850
Auckland	37,640	16,670
Waikato	281,060	62,950
East Coast/Bay of Plenty	628,540	144,900
Taranaki/Whanganui/Tongariro	511,460	211,430
Wellington/Hawkes Bay	378,480	385,300
Nelson/Malborough	1,288,960	243,980
West Coast	1,898,560	850,410
Canterbury	1,051,400	400,400
Otago	689,580	236,370
Southland	1,909,010	239,410
Total	8,838,470	2,820,670

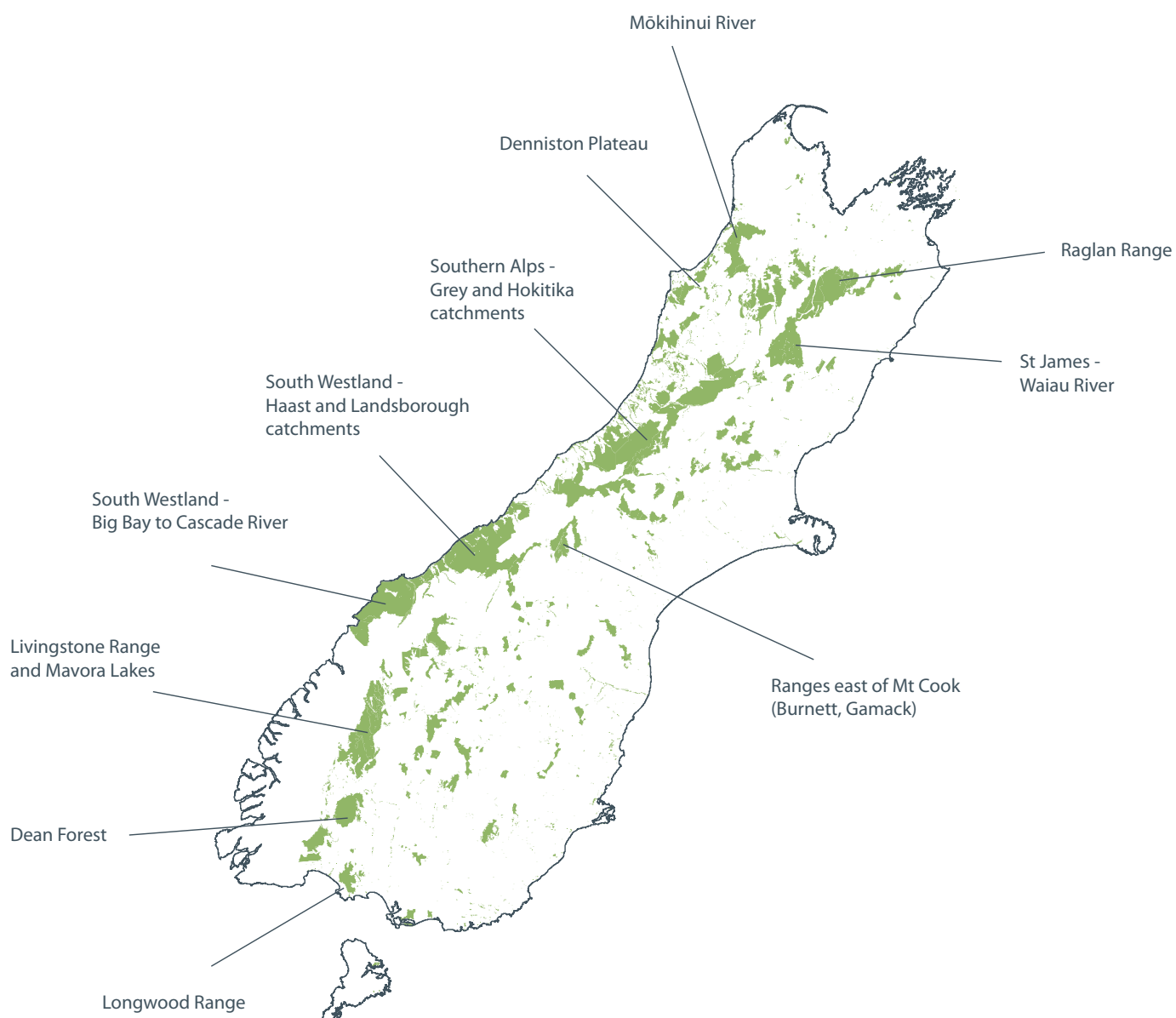
Source: DOC

Table 3.1 Areas of land in the conservation estate by conservancy.



Source: DOC GIS data

Figure 3.3 Areas of stewardship land. Most stewardship land is in the South Island.



3.3 The value of stewardship land

It cannot be assumed that stewardship land is all, or even generally, low value conservation land.

No systematic assessment of the conservation (or commercial) value of most stewardship areas has ever been undertaken. There are cases where the assessment has been done, but the recommended reclassifications have not been made. And land has been added to the conservation estate because of its high conservation value, yet some remains as stewardship land.

In short, as illustrated in Figure 3.5, different areas of stewardship land must have different conservation values – from very high to very low.

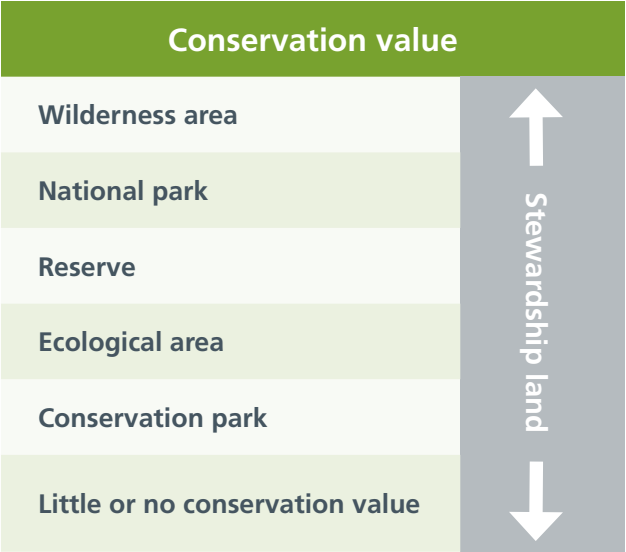


Figure 3.4 The conservation value of different areas of stewardship land has never been systematically evaluated.



4

How is stewardship land managed today?

The Conservation Act requires DOC to manage stewardship land so that “*its natural and historic resources are protected*”. But what does this mean in practice? And how does it differ from the management of other categories of conservation land?

There are two aspects to the ‘management’ of stewardship land.

First, there is the **operational** management of stewardship land – the day-to-day work of DOC. These activities are many and varied – they include killing pests, maintaining tracks, preserving historic sites, and providing tourists with information. How stewardship land is managed ‘on the ground’ is considered in the first section of this chapter.

Second, there are three kinds of **legal** decisions that can be made about an area of stewardship land that has consequences for its management (and sometimes its ownership).³⁶ These are decisions to (or not to):

- allow particular commercial uses on an area of stewardship land (subject to conditions)
- sell or swap an area of stewardship land
- reclassify an area of stewardship land into another category of conservation land.

These are covered in the second, third and fourth sections of this chapter.

4.1 Managing stewardship land on the ground

There are many dimensions to the value of conservation in New Zealand, including the unique diversity of our plants and animals, spectacular scenery, and the range of recreation opportunities. On a day-to-day basis, does DOC protect the conservation value of stewardship land any differently from the way it protects the rest of the conservation estate?

At the national level, the Conservation General Policy does not require DOC staff to treat stewardship land differently from other categories of conservation land.³⁷

Within each conservancy, operational management is guided by a Conservation Management Strategy, outlining how different parts of the conservancy are to be managed. However, these ‘management zones’ are not based on land classifications, but on the ‘priority values’ of particular areas. For example, a ‘priority site for biodiversity management’ in the Mōkihinui catchment is part ecological area, part national park, and part stewardship land.³⁸

The same applies to the tools DOC uses to decide how actively to manage particular areas.³⁹ These tools are focused on particular dimensions of conservation value, such as endangered species, rare ecosystems, and places much-loved by the public. DOC actively manages many such priority sites on stewardship land (see Figure 4.1). Thus, DOC’s management planning and day-to-day operations are focused on particular needs, values and priorities rather than primarily based on land status.

This was clarified in 2005 when the Director-General of Conservation requested conservators to refer to stewardship land areas as ‘conservation areas’, “*so they are seen to be on an equal footing with other areas held under the Conservation Act*”.⁴⁰



Source: Queenstown Rafting

Figure 4.1 The Landsborough River in South Westland flows from a wilderness area through stewardship land on its way to the sea.

4.2 Allowing commercial use of stewardship land

All commercial activities on the conservation estate, other than mining, require a 'concession'.⁴¹ For mining, an 'access arrangement' is required instead.⁴²

There are about 4,500 concessions on conservation land today allowing activities ranging from large hydroelectric dams through to small guided walking tours.⁴³

Are applications to undertake commercial activities on stewardship land treated differently simply because it is stewardship land?

33

Concessions

When considering an application for a concession, the Minister of Conservation (or his or her delegate) must consider a wide range of matters. Most are related to the effect of the proposed activity on the particular area of the conservation estate, rather than the area's legal status.⁴⁴ However, a concession can only be granted if the commercial activity is consistent with "*the purposes for which the land concerned is held.*"⁴⁵

But unlike other categories of conservation land, stewardship land is not held for specific purposes. For instance, the specific purpose for which conservation parks are held is the enjoyment of recreation. However, stewardship land is only held for the generic purpose of protecting natural and historic resources.⁴⁶

This vagueness about the purpose for holding stewardship land must make it easier to gain concessions for commercial activities on this category of conservation land. Indeed, it is certainly perceived to be so.

For instance, the Project Manager of the proposal to build a hydroelectric scheme on the Mōkihinui River that flows through stewardship land near Westport was quoted as saying:

*"An important fact of this project is that the area affected by the scheme is stewardship land ... [it's] not in a national park, it's not in an ecological reserve or specially protected area."*⁴⁷

Access arrangements for mining

The vague purpose for holding stewardship also means that its legal protection is lower than other land in the conservation estate when access for mining is sought. And again, it is perceived to be so. For example, a recent booklet on mining from the Institution of Professional Engineers described stewardship land as having “*no protected status*”.⁴⁸

Commenting on his recent decision regarding an open cast coal mine on the West Coast Denniston Plateau, the Minister of Conservation said: “*It is general stewardship land, which is the lowest legal status of protection of land managed by the Department of Conservation*”.⁴⁹

In addition access arrangements differ from concessions in important ways.

Access for mining cannot be granted for areas of the conservation estate that are listed in Schedule 4 of the Crown Minerals Act. However, very little stewardship land is listed in Schedule 4.⁵⁰

Access arrangements are decided jointly by two Ministers – the Minister of Conservation and the Minister of Energy and Resources, rather than just the Minister of Conservation. The two Ministers are only required to *consider*, rather than (as for concessions) *ensure*, consistency with the purposes for which the land is held.⁵¹



Source: Craig Potton

Figure 4.2 Mt Rochfort on the Denniston Plateau is stewardship land.

4.3 Selling or swapping stewardship land

Stewardship land is the only category of conservation land that can be sold or readily swapped for other land.⁵²

Selling stewardship land

The sale (disposal) of an area of stewardship land must meet a number of legal criteria. The land must be assessed for both its conservation value, and the public must be consulted. Stewardship land that is next to other conservation land can only be sold if its retention does not *“materially enhance the conservation or recreational values of the adjacent conservation area ...”*.⁵³

Further guidance is provided in the Conservation General Policy. Only stewardship land that has *“no, or very low, conservation values”* should be sold. Land with *“international, national or regional significance”* and land that *“increases the natural linkages between places”* should not be sold.⁵⁴

Sales of stewardship land are uncommon and appear to have involved only very small areas of land. Between 2008 and 2010, for example, only nine sales took place, totalling 51 hectares.⁵⁵

Swapping stewardship land

The ability to swap (exchange) an area of stewardship land for an area of private land was added to the Conservation Act in 1990. The intent was to provide a less onerous alternative to land sales for rationalising boundaries.

The law requires that a land swap must *“enhance the conservation values of land managed by the Department and promote the purposes of this Act”*. It also requires that the local conservation board be consulted.⁵⁶ But unlike sales, there are no restrictions on what areas of stewardship land can be swapped.

Again, the Conservation General Policy provides some further guidance. It gives criteria for desirable features of land that is to be added to the conservation estate.

Most land swaps have involved exchanging low value stewardship land for land with high value and have been non-controversial. Two examples are given in Box 4.1.⁵⁷

However, two other proposals for land swaps have recently attracted a great deal of controversy. These are examined more closely as short case studies in the next chapter.

Box 4.1: Examples of non-controversial land swaps

Kerikeri Airport

In 2007, DOC's Northland Conservator approved an exchange of 0.3 hectares of stewardship land in return for 14 hectares of private land. The exchange was sought by Kerikeri Airport to improve airport parking facilities. The stewardship land was described as *"habitat of some common native bird and plant species, but considered to have relatively low conservation values; diminished somewhat by the presence of gorse, tobacco weed and hakea"*. The land acquired by DOC was described as an *"outstanding ecosystem, containing rare types of [Kauri] gumland vegetation, fern birds and Northland mudfish"*. The Northland Conservation Board supported the proposal, as did the local iwi Ngāti Rehia.⁵⁸

Ka Whata Tu o Rākihōuia Conservation Park

In 2011, the Nelson/Marlborough Conservator approved an exchange of 1 hectare of stewardship land for 10 hectares of private land nearby. This exchange, sought by DOC, adjusted the conservation land boundary in two nearby places. A small paddock of fenced pasture that had been grazed since the 1970s was transferred to the farmer, and a larger area of *"alluvial forest [with] many attributes not well represented in adjoining protected land"* was acquired for conservation. The Nelson/Marlborough Conservation Board supported the proposal. Today the conservation land acquired is part of a conservation park.⁵⁹

4.4 Reclassifying stewardship land

Any area of stewardship land can be reclassified into another category of conservation land.⁶⁰ Such reclassification decisions are made by the Minister of Conservation or by Cabinet.⁶¹ Putting a parcel of stewardship land into another category gives it greater protection under the law for two reasons.

First, as discussed in Section 4.2, all conservation land categories other than stewardship land are held for explicit and specific purposes. Stewardship land is simply held for the vague purpose of protecting natural and historic resources, meaning that it is easier to get permission for commercial activities.

Second, the protection of stewardship land is much less ‘permanent’ than the protection of other categories of conservation land. This is because, as discussed in Section 4.3, it is only stewardship land that can be sold or swapped. For other conservation categories to be taken out of the conservation estate they must first be reclassified as stewardship land, which requires public consultation.

The intended programme of systematic assessment of stewardship land and reclassification or disposal of stewardship land has not taken place. However, in response to concerns about stewardship land expressed by the New Zealand Conservation Authority in 1999, DOC developed a set of ‘prioritising criteria’, which is still used today.⁶²

Putting stewardship land into another category gives it greater protection

Some proposed reclassifications are high profile, such as that for the Kauri National Park in Northland. But many reclassifications have been small scale and low profile.

Every ten years, a conservation management strategy is prepared for each conservancy. This provides an opportunity for planning which areas will be considered for reclassification, in consultation with the public.⁶³ For instance, the draft strategy for the Waikato Conservancy proposes that all stewardship land adjacent to the Coromandel Forest Park be added to it.⁶⁴ And the draft strategy for the Auckland Conservancy proposes an investigation into reclassifying stewardship land on Great Barrier Island as either conservation park or national reserve.⁶⁵

The potential reclassification of stewardship land is explored further in Chapter 6.



Figure 4.3 Looking south from the ridgeline of the St Arnaud Range overlooking Lake Rotoiti. The land east of the ridge (page 38) is stewardship land and the land west of the ridge (page 39) is part of Nelson Lakes National Park.



Source: Parliamentary Commissioner for the Environment archives



5

Case studies: Two controversial land swaps

In recent times two significant swaps of stewardship land for private land have been proposed. The first involved a proposal to build a hydroelectric dam on the Mōkihinui River on the West Coast that was withdrawn before a decision could be made. The second involved the expansion of a ski field in Canterbury and was approved.

Both proposals were on a different scale from previous land swaps and attracted controversy. This chapter explores what happened for each.

5.1 The Mōkihinui proposal

The Mōkihinui River flows freely from its source to the sea, falling from a high plateau in the Matiri mountain range, meandering through alluvial flats, and winding through a wild gorge before it reaches the Tasman Sea.

In 2008, Meridian Energy, a state-owned electricity company, announced its intent to build a hydroelectric dam at the end of the Mōkihinui Gorge. The dam would have flooded the gorge.

The Mōkihinui flows through stewardship land, a point noted by Meridian Energy. As cited in the previous chapter, the Project Manager said:

*“An important fact of this project is that the area affected by the scheme is stewardship land ... [it’s] not in a national park, it’s not in an ecological reserve or specially protected area. The river doesn’t have a water conservation order on it. Given all the hoo-ha about national parks recently, I think it’s quite an important point.”*⁶⁶

Because the Mōkihinui flows through the conservation estate, permission to build the dam was required from DOC.⁶⁷ Meridian began to seek this permission in the form of a concession. In response, DOC assessed the conservation value of the gorge, rating it highly, particularly in terms of representativeness, intactness, unique backcountry experience, and long-term viability.⁶⁸

It became clear that DOC would not recommend a concession allowing the gorge to be flooded. Meridian then turned to its second option. Because the gorge was stewardship land, the company could potentially swap other land for the gorge.⁶⁹

Meridian offered to swap 794 hectares of private lowland coastal forest in exchange for the much smaller 225 hectare Mōkihinui Gorge (see Figure 5.1).⁷⁰ However, after comparing the two, DOC indicated that they would not recommend the exchange because it would not enhance the conservation values of the conservation estate - the legal requirement for a land swap.

Interestingly, in comparing the conservation value of the gorge and the land offered in exchange, DOC could not include the value of the river itself, only the land on either side of the river.⁷¹ This was because the riverbed is not 'administered' by DOC, but by Land Information New Zealand (LINZ). This is at odds with the fact that the conservation value of a gorge obviously includes the river that flows through it, the plants and creatures that make their home in it, and, of course, the landscape in its totality.⁷²

Another aspect of this case was that Meridian had already gained resource consents from both the West Coast Regional Council and the Buller District Council. However, in its advocacy role, DOC lodged an appeal against the granting of these consents, and spent \$1.4 million to prepare for the hearing in the Environment Court.⁷³

**The Mōkihinui
Gorge was never
reclassified**

Clearly DOC believed the Mōkihinui Gorge had high conservation value, yet the land had not been reclassified to reflect this value, despite a proposal to do just that as recently as 2008.⁷⁴ In May 2012, Meridian decided not to build a hydroelectric dam on the Mōkihinui River, citing high costs and risks.⁷⁵ To date the land remains classified as stewardship land.



Map data: Google, MapData Sciences Pty Ltd, PSMA

The Mōkihinui river flows through stewardship land.



Map data: Google, DigitalGlobe / TerraMetrics

The land exchange proposed by Meridian. The white outline shows Sawyer's Creek, the main piece of private land offered in exchange for the stewardship land shown in green.

Figure 5.1 Images showing the Mōkihinui Gorge and the proposed land exchange site.

5.2 The Crystal Basin proposal

About the same time that Meridian applied for a land swap on the West Coast, a ski field company applied for a land swap in order to expand its operations in Canterbury.

Blackfish Ltd owns and operates the Porters Ski Area inland from Christchurch in the foothills of the Southern Alps.⁷⁶ The company developed a plan to extend its existing ski area into the neighbouring basin, and develop a new alpine village in the valley below.

In 2010, the company wrote to DOC proposing a land swap to enable it to acquire 196 hectares of stewardship land – Crystal Basin – for expanding the ski area and a valley terrace for disposing of waste from the planned alpine village.

Six years earlier, the Government's Nature Heritage Fund had paid \$3.5 million for several thousand hectares of high country land that included Crystal Basin. The purchase was described as a *"strategic acquisition because it would link a number of key protected areas"*.⁷⁷ Much of the land, including Crystal Basin, was to be reclassified into Craigieburn Conservation Park.

Crystal Basin involved swapping one significant area for another

In return for freehold ownership of Crystal Basin and Northern Terrace, Blackfish offered Steep Head Gully on Banks Peninsula (see Figure 5.2), along with the surrender of its lease to part of Craigieburn Conservation Park.⁷⁸

Steep Head Gully is a 56 hectare area of relatively rare coastal lowland forest at Le Bons Bay. Comparison of its conservation value with that of Crystal Basin generated a large volume of advice, with experts reaching different conclusions.⁷⁹

DOC advised that both Crystal Basin and Steep Head Gully were at least *"regionally significant"*, so the proposal *"would involve exchanging one significant place for another"*.⁸⁰ In March 2011, the Director-General of Conservation approved the land swap, writing to Blackfish:

*"I am particularly persuaded by the fact that the acquisition of Steep Head Gully will improve the quality and extent of representativeness of conservation values managed by the Department and I have placed a high value on the ability to secure and protect an example of a nationally rare ecosystem."*⁸¹

On 21 March 2011, the then Minister of Conservation, reversed the previous Minister's commitment to reclassify Crystal Basin from stewardship land to conservation park.⁸²

Both the proposal and the eventual decision attracted controversy.

The Canterbury Aoraki Conservation Board recommended the exchange be declined and the company be invited to reapply for a long-term lease instead.⁸³ The Chair of the Board called the proposed land swap “*dodgy*” and “*opportunistic*”, and said it set a dangerous precedent.⁸⁴

The Nature Heritage Fund was consulted on the proposal due to its role in the original purchase of the high country land that included Crystal Basin. Its advice listed many reasons why the area had been purchased for conservation, and stated that the land swap would breach the commitment to give legal protection to the area.⁸⁵

Ngāi Tahu's view was that land swaps should be limited to “*similar size, similar value swaps*” in the same location, and that the iwi should have been given the option of buying the land first.⁸⁶

Forest & Bird questioned the legality of the proposed land swap because it included ‘interests in land’ – rather than just land itself.⁸⁷ One major ‘interest in land’ given by Blackfish to DOC was the surrender of the company's lease to part of the Craigieburn Conservation Park.

Forest & Bird also said that DOC “*would be giving away publicly owned land of high conservation value in return for land already owned which is under no particular conservation threat*”.⁸⁸

This raised the issue of the nature of the gain to conservation. Under the law, land swaps need only increase the value of the conservation estate (i.e. the land managed by DOC), not necessarily provide a net benefit to New Zealand conservation more generally. Before the land swap, the forest in Steep Head Gully could not be cleared because it was protected by the Banks Peninsula District Plan.⁸⁹

The Crystal Basin exchange attracted considerable controversy

At the time of writing, the ownership of Crystal Basin has changed several times, and the planned development of the ski field has not begun.



Map data: Google, DigitalGlobe



Map data: Google, Landsat, DigitalGlobe, TerraMetrics



Map data: Google, TerraMetrics

Figure 5.2 Crystal Basin in the foothills of the Southern Alps was swapped for Steep Head Gully on Banks Peninsula.



6

Swapping and reclassifying stewardship land

The two case studies in the preceding chapter have served to highlight two major issues associated with stewardship land – *land swaps* and *reclassification*.

There have been many swaps of stewardship land for private land that have been straightforward. However, the controversial land swaps outlined in Chapter 5 both involved trading a significant area of stewardship land with high conservation value for a very different area of private land – in the first case, a wild river gorge and in the second case an alpine basin – both for areas of lowland forest.

Areas of stewardship land can be reclassified into categories that reflect its conservation value and thus give it more appropriate protection. A proposal to reclassify the Mōkihinui Gorge as conservation park in 2008 came to naught. And the intent to reclassify Crystal Basin after it was added to the conservation estate was reversed in 2011.

The first section in this chapter examines the policies and processes associated with land swaps. The second section examines the policies and processes associated with land reclassification.

6.1 Swapping stewardship land

As described in Chapter 2, it became apparent soon after the Conservation Act was enacted that a simple process was required to allow DOC to adjust boundaries and rationalise small areas of conservation land.

The original proposal in 1989 was to provide for any category of conservation land to be swapped, regardless of its level of protection.⁹⁰ However, in the select committee process, this was changed to restrict land swaps to stewardship land.^{91,92}

Reflecting its purpose, the ‘exchange provision’, as it is called, was kept simple and non-specific. There is a requirement to consult the local Conservation Board, but not the public. Then the Minister has only to be satisfied that a land swap will *“enhance the conservation values of land managed by the Department”* and promote the purposes of the Act.⁹³

However, as the two case studies illustrate, there is a move to use land swaps in more complex situations than rationalising boundaries. Such situations may involve larger areas of stewardship land with high conservation value.

In such cases, the need to ensure the value of the conservation estate is *“enhanced”* – i.e. there is a net conservation benefit – becomes challenging. This was recognised in the discussion document *“A Bluegreen Vision for New Zealand”* which proposed that the New Zealand Conservation Authority be given a mandate *“to make decisions on the basis of net conservation benefit”*.⁹⁴



Source: Parliamentary Commissioner for the Environment archives

Figure 6.1 Repeated freezing and thawing has created the shattered landscape of the Raglan Range, east of Nelson Lakes National Park. The range is stewardship land.

The land swaps in the two case studies went far beyond adjusting boundaries. In the Mōkihinui case, assessing net conservation benefit required comparison of a wild and scenic river gorge with three areas of lowland forest on the West Coast. In the Crystal Basin case, assessing net conservation benefit required comparison of an alpine basin with a forested gully on Banks Peninsula.

Comparisons of this kind will always be difficult unless one area of land has obviously low conservation value and the other has obviously high conservation value. This does not make it impossible to assess net conservation benefit, but it should be done in accordance with a clearly articulated set of principles.

Unfortunately, the guidance provided in DOC's Conservation General Policy is not up to the task. The policy contains one set of principles for both acquisitions and exchanges. As a result the principles focus on the *gains* of a land swap, but provide little guidance on how to evaluate the *losses*.⁹⁵ Consequently there is little guidance on how to compare gains and losses in a complex exchange.

Another issue is that only the net benefit to the *conservation estate* can be considered, and this may not be the same as a net benefit to *conservation*. The law is blind to conservation protection outside of land managed by DOC.

In the Mōkihinui case, the conservation value of the river itself could not be taken into account in the land swap proposal because DOC does not 'administer' its riverbed. It is one of many rivers that flow through the conservation estate, yet in the eyes of the law are outside it. This makes no sense and compromises the management of the conservation estate.



Source: Oisín Duke

Figure 6.2 Because the bed of the river is not 'administered' by DOC, the value of the river was not considered in the proposed land swap.

In the Crystal Basin case, Steep Head Gully was already protected under local plans and the New Zealand Coastal Policy Statement. But this was not accounted for in the land swap proposal because Steep Head Gully was not inside the conservation estate.

The Crystal Basin case was complicated further by the inclusion of ‘interests in land’ in the exchange – the ski field company surrendered its lease to part of Craigieburn Conservation Park. The legality of this has not been tested.⁹⁶ Irrespective of the legal situation, it seems extraordinary that the right to lease land – a right that has been granted, not purchased – can be traded for ownership of other land.

In the Conservation Act, the exchange provision for stewardship land does not include a requirement for public consultation.⁹⁷ In contrast, exchanges of reserve land, disposals and reclassifications all go through a public consultation process. Similarly, all significant applications for commercial use require public consultation. And the Government has recently made changes to the Crown Minerals Act to require public notification of significant access agreements for mining on conservation land.⁹⁸

There is no requirement for public consultation on land swaps

The exchange provision for stewardship land does require consultation with the local Conservation Board.⁹⁹ This is a useful and appropriate check on swaps involving the kinds of minor changes envisioned in 1989 when the provision was added to the Conservation Act. However, in cases that are not ‘minor’ and there is likely to be public interest in a land swap, the public should be consulted.

Collectively, these weaknesses make the exchange provision for stewardship land unsuitable for evaluating anything other than small, simple swaps. For anything more complex, both the law and departmental policy are far from adequate.

6.2 Reclassifying stewardship land

Stewardship land comprises many different areas of land. Some will have high conservation value and some will have low conservation value and others will be in between. But all share the same legal status.

Over the years, some stewardship land has been reclassified into other categories and given greater legal protection, and some has been swapped or sold. But much has been left in the 'statutory holding pen'.¹⁰⁰ It appears that reclassification of stewardship land has never been a priority for DOC. In this section, the case for dealing with at least some of this 'unfinished business' is examined.

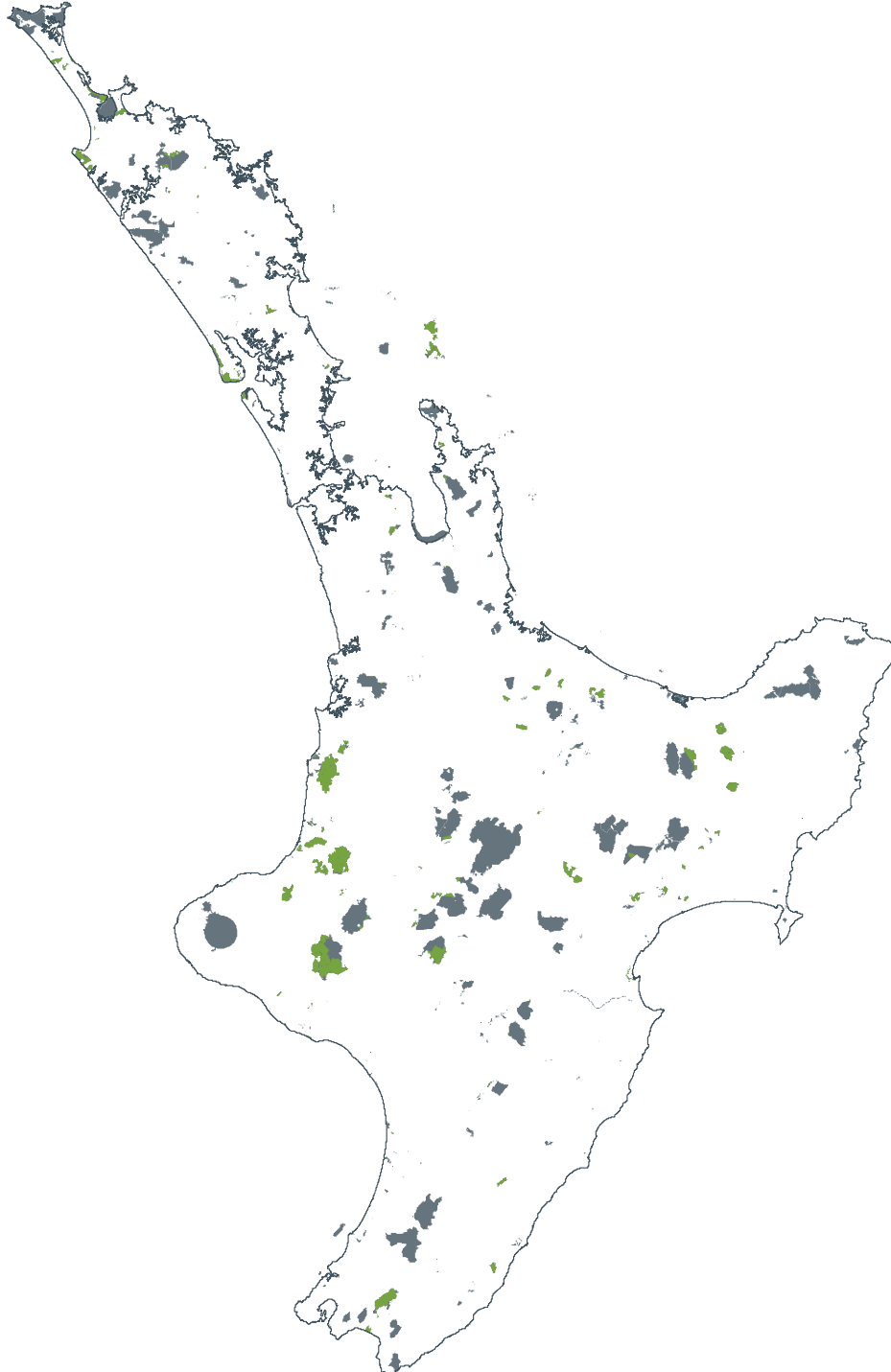
Some areas of stewardship land are clearly in need of urgent reclassification, so they can be better protected. About a thousand priority areas for biodiversity have been identified by DOC, in order to achieve its goal that: *"A full range of New Zealand's ecosystems is conserved to a healthy functioning state"*.¹⁰¹

These biodiversity priority areas collectively cover 3 million hectares. Over a quarter (28 percent) of this is on stewardship land (see Figure 6.3).¹⁰²

Some areas of land have been added to the conservation estate because they were seen as having high conservation value, and yet they remain with the uncertain status of stewardship land. One such is the St James Station in North Canterbury, purchased for \$40 million by the Crown in 2008 for its scenery, ecology, recreational opportunities and historic heritage.¹⁰³

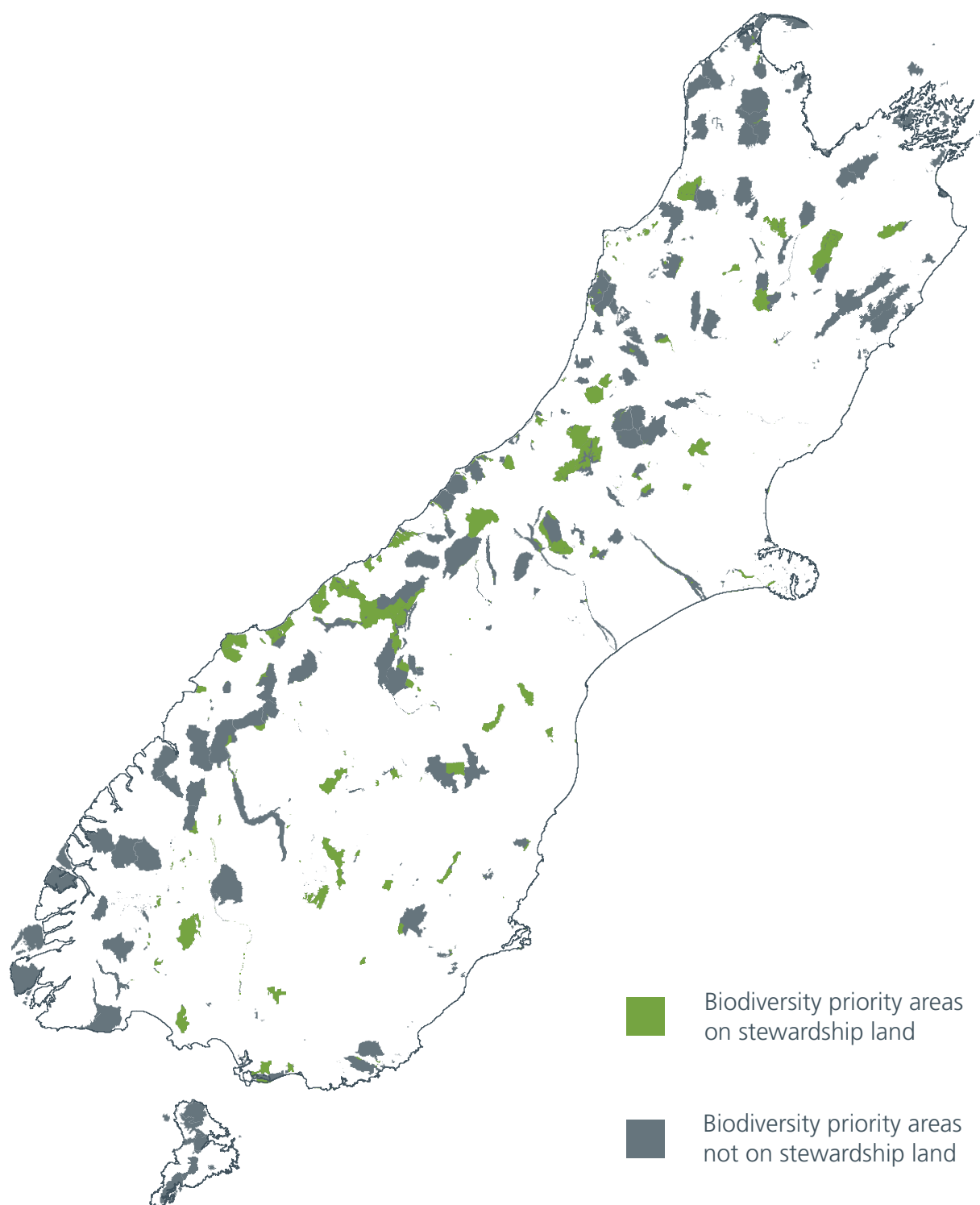
There is an urgent need to reclassify some stewardship land

Extensive areas of stewardship land within the Te Wāhipounamu – South West New Zealand World Heritage Area in the South Island are also good candidates for reclassification. This World Heritage site is one of only 193 natural sites recognised by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as having *"outstanding universal value"*.¹⁰⁴



Source: DOC GIS data

Figure 6.3 DOC's Natural Heritage Management System has identified biodiversity priority areas. The green depicts priority areas that lie on stewardship land. The grey depicts other priority areas.





Source: Rien Croonenborghs

Figure 6.4 The Mavora Lakes lie within stewardship land that is part of Te Wāhipounamu – a UNESCO World Heritage site in the south west of the South Island. To be accepted as a natural World Heritage site, Te Wāhipounamu had to meet only one of four criteria but it meets all four.¹⁰⁵

Reclassification of stewardship land has never been a high priority. The relevant section in the Conservation General Policy does not convey any sense of urgency, stating that “*lands may be reviewed from time to time...*”.¹⁰⁶

DOC’s system of prioritising reclassification of land into other categories is focused on making changes that assist with operational management, rather than on ensuring appropriate legal protection.¹⁰⁷ Yet stewardship land that has high conservation value does not have appropriate legal protection.

During this investigation, DOC staff gave a number of reasons for being reluctant to embark on reclassification of stewardship land.¹⁰⁸ These included the cost of surveying, inadequate resources, the staff time required for public consultation, and more pressing priorities.¹⁰⁹ The flexibility inherent in the vague purpose for the protection of stewardship land is also seen as an advantage when dealing with applications for commercial use and land swaps.¹¹⁰

The Mōkihinui case illustrates that there can be big costs associated with not reclassifying stewardship land. DOC spent over \$1.4 million opposing the proposed dam on the Mōkihinui River. Had Meridian not withdrawn its proposal, more would have been spent on the Environment Court hearing. And as long as the Mōkihinui Gorge remains as stewardship land, the same scenario could begin to play out again.

It would be prohibitively costly to embark on a programme of reclassification of all stewardship land. On the other hand, the current piecemeal approach lacks strategic focus.

Stewardship land is less protected than other land in the conservation estate for two reasons. First, the purpose for its protection is vague and generic. Second, it can be swapped for private land under an inadequate exchange provision in the Conservation Act which departmental policy does not rectify.

There are areas of stewardship land which by DOC's own assessment have high conservation value – those which lie within the biodiversity priority areas for a start. There is a strong case for reclassifying such land so that its legal protection is aligned with its conservation value.



Source: Matt Pilott

Figure 6.5 St James Station in North Canterbury was purchased by the Government in 2008 for addition to the conservation estate. Five years later, it is still stewardship land.



7

Conclusions and recommendations

Today one third of the conservation estate is categorised as ‘stewardship land’. Such land has the weakest legal protection of all categories of conservation land, despite some clearly being of high conservation value.

The systematic reclassification of many areas of stewardship land into other categories and the disposal of others that was envisaged in 1987 has never happened, and is not a realistic prospect – if it ever was. Indeed, the total area of stewardship land now may well be larger than it was in 1987. Yet the ambiguity about its status remains.

The relatively weak legal protection of stewardship land quite naturally signals to the private sector that this part of the conservation estate is ‘open for business’. Yet both the Conservation Act and departmental policy provide little direction or guidance for considering applications for proposed commercial uses of stewardship land. The law states only that its ‘natural and historic resources’ are to be protected but gives no indication why.

The law also allows areas of stewardship land to be swapped for areas of private land, subject to the vague proviso that it will “*enhance the conservation values*” of the conservation estate. And the two case studies in this report illustrate that departmental policy governing land swaps is far from adequate.

Not all stewardship land has high conservation value, and some will have none at all. There is a place for some flexibility in the management and exchange of stewardship land. A central guiding principle that should underpin any exchange mechanism is the principle of *net conservation benefit*. The conservation estate is a Crown asset, and the Crown rightly deserves a return if others are to use that asset.

This return can be in the form of money, new land or activities like pest control. But the gain to conservation must outweigh the loss – there must be a genuine net benefit. This investigation has highlighted the pressing need to figure out what we mean by net conservation benefit – to develop policy and law that is principled and coherent.

It has also become clear that some areas of stewardship land are of high conservation value and deserve the legal protection that reflects that value. For instance, of the land identified by the Department of Conservation as having high biodiversity value, over a quarter remains categorised as stewardship land.

This chapter contains recommendations covering the swapping and reclassification of stewardship land.

7.1 Swapping stewardship land

The Conservation Act contains an exchange process that allows areas of stewardship land to be swapped for areas of private land. It has been used over the years to allow small non-controversial swaps such as passing ownership of an area of pasture to a farmer in exchange for an adjacent bush-covered hillside.

In the last few years, the exchange provision has been used to propose and enable stewardship land that has significant conservation value to be taken out of the conservation estate by swapping it for private land.

It may be, for example, that the swapping of an alpine basin in Canterbury for a forested gully on Banks Peninsula, as with the Crystal Basin case, did lead to a net gain in the value of the conservation estate. But the more important question is whether it led to a net gain for conservation overall, regardless of whether the gain is within or outside the conservation estate. What is clear is that the law and policy that guide such assessments are inadequate. For instance, current policy focuses on the consideration of gains in conservation value but gives little guidance on the consideration of losses.

Net conservation benefit is a relatively new but promising concept in conservation. But there is work to be done to develop the concept into better law and policy before the public can have confidence that major land swaps can mean a good deal for conservation.

There is an important role here for the New Zealand Conservation Authority. It represents the broad public interest in the conservation estate, and is well placed to lead a public discussion and provide advice to the Minister.

In the meantime, the Department of Conservation will continue to receive land swap proposals. Using a legal provision designed for small non-controversial land swaps for taking large and valuable tracts of land in and out of the conservation estate is not good practice and will continue to attract controversy.

It is important the Minister takes responsibility for such proposals rather than delegating decisions to departmental staff. Delegating such decisions is appropriate where a proposed land swap involves stewardship land with little or no conservation value. However, it does not provide sufficient accountability for exchanges of land that has significant conservation value.

Until better law, policies, and processes have been developed that can provide a sound basis for applying the concept of net conservation benefit, the Minister should not delegate any decisions involving significant land swaps. Indeed, there is a case for deferring such decisions in the interim.

I recommend that:

1. The Minister of Conservation:

- a) **seeks advice from the New Zealand Conservation Authority to provide guidance on the principles and processes that should be used when making decisions on net conservation benefit;**

and, in the meantime,

- b) **takes direct responsibility for any decision to swap stewardship land that has significant conservation value.**

7.2 Reclassifying high value stewardship land

There are clearly areas of land within the conservation estate that have significant conservation value, yet remain with the low legal protection status of stewardship land.

While such inconsistency remains, we can expect to see more cases like that which occurred with the proposal for a dam on the Mōkihinui River. On the one hand, the gorge was left (and remains) as stewardship land signalling that it is of low value. On the other hand, the Department of Conservation had committed to a very expensive appeal against the resource consents for the dam in the Environment Court.

The Department of Conservation is currently taking a more systematic approach to identifying its conservation priorities. Where an area of land has been identified as having, for instance, high biodiversity value, it should not be left inadequately protected as stewardship land. Currently, all conservation management strategies are being revised, providing an opportunity for the public to propose reclassification of particular stewardship areas.

The Department should prepare a national strategy for the reclassification of stewardship land with significant conservation value, setting out revised reclassification priorities, and a plan and timetable for implementation.

I recommend that:

- 2. The Minister of Conservation instruct the Department of Conservation to identify areas of stewardship land that are clearly of significant conservation value, and reclassify them in accordance with that value.**

Notes

- 1 Often the term 'public conservation land' is used, but this does not distinguish the conservation land managed by DOC from the many reserves and parks owned and managed by councils. DOC also manages some marine reserves.
- 2 The conservation estate covers about 8.8 million hectares. As at May 2013, 2.8 million hectares was classified as stewardship land.
- 3 New Zealand Conservation Authority. April 2005. *General policy for national parks* (p. 9).
- 4 Conservation Act 1987, s25. Although the Conservation Act uses the term 'stewardship area', for land areas in this category, DOC calls them 'conservation areas' on signposts, publications and databases.
- 5 For example, in 1980, the International Union for the Conservation of Nature (IUCN) proposed that forest estates should be managed "*on the principle of stewardship, with commitment to maintain in perpetuity ecological processes, watersheds, soils and genetic diversity*". IUCN. 1980. *World conservation strategy: Living resource management for sustainable development* (para. 11, chapter 9).
- 6 The Resource Management Act 1991, for example, includes "*the ethic of stewardship*" in its list of priority considerations. This sits alongside the Māori concept of kaitiakitanga, which is often translated as stewardship, although the two concepts have different origins and connotations and are therefore not considered synonyms. RMA 1991, s7(a) and (aa).
- 7 Woollaston, P. 2011. Origins of the legislation and policy relating to minerals in conservation areas. *Policy Quarterly*, 7(1): p. 4.
- 8 Parliamentary Commissioner for the Environment. 2010. *Making difficult decisions: Mining the conservation estate*. Schedule 4 was added to the Crown Minerals Act in 1997 and restricts mining on some categories of conservation land. Schedule 4 land areas total about 40 percent of the conservation estate.
- 9 Parliamentary Commissioner for the Environment. 2012. *Hydroelectricity or wild rivers? Climate change versus natural heritage*.
- 10 The first report titled "*Stewardship land and DOC – the beginning*" was written by Hon. Philip Woollaston, Associate Minister of Conservation at the time. The second report titled "*Background and history of the development of the conservation estate in New Zealand*" was written by Guy Salmon, a leading environmental advocate.
- 11 The Right Hon. Mr. Seddon (Premier), Scenery Preservation Bill, Hansard Vol 126, 22 October 1903, p. 705.
- 12 Young, D., 2004, *Our Islands Our Selves: A History of Conservation in New Zealand*, University of Otago Press.
- 13 Premier Vogel speaking in support of the New Zealand Forests Bill in 1874. Cited in Wynn, G. 1977, Conservation and Society in Late Nineteenth-Century New Zealand, *New Zealand Journal of History* vol 11, no 2, 1977, p. 125.

- 14 Young, D., 2004, *Our Islands Our Selves: A History of Conservation in New Zealand*, University of Otago Press, p. 88.
- 15 New Zealand's first national park was Tongariro in 1887. The then paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu Tukino, sought the Crown's protection for the mountains in order to save them from private European subdivision. The Crown took the opportunity to get full ownership of the land and satisfy growing demands for the Government's push for more areas for tourism and recreation. Tongariro with its mountain wilderness and scenic terrain fitted well with the new European romantic ideal of wilderness. Waitangi Tribunal, *The National Park District Inquiry Report*, Chapter 11.
- 16 Hon. Russell Marshall, 11 December 1986, Hansard, p. 6138.
- 17 Landcorp still exists and manages over a hundred farms owned by the Crown. Most of the forests managed by Forestcorp were eventually sold, and Crown Forestry continues to manage residual state commercial interests in forests.
- 18 The remaining part of the Department of Lands and Survey became Land Information New Zealand (LINZ), which continues to administer some Crown land, including the high country leases. The New Zealand Forest Service ceased to exist in 1987. The Wildlife Service was taken out of the Department of Internal Affairs and incorporated into DOC. DOC was also given the responsibility of protecting cultural and built heritage on reserved lands, although the Historic Places Trust continues to be the leading advocacy and protection authority. DOC is also responsible for marine reserves.
- 19 Most stewardship land came from the Department of Lands and Survey and the New Zealand Forest Service. The remainder came from a range of government agencies. This included redundant lighthouses from the Post Office, old schools from the Department of Education, and some land from New Zealand Railways. Some of the transfers took time to be completed – for example, the 300,000 ha of State forests on the West Coast were split between DOC and Timberlands in 1988-89.
- 20 Hon. Russell Marshall, 11 December 1986, Hansard, p. 6139.
- 21 Salmon, G. *Background and history of development of the conservation estate in New Zealand*, 20 May 2013, p.19. Available at www.pce.parliament.nz
- 22 Conservation Bill No. 90-1, cl 2.
- 23 Conservation Act 1987, s25.
- 24 Woollaston, P. *Stewardship Land and DOC - the beginning*, September 2012, p. 7. Available at www.pce.parliament.nz.
- 25 The original proposal, as discussed in Chapter 6, was that the exchange provision would apply to all categories of conservation land.
- 26 Conservation Law Reform Bill: Report to the Planning and Development Select Committee by Officials of the Department of Conservation, 27 October 1989, p. 46.
- 27 Information provided by DOC, 31 July 2013.
- 28 Recently the Nature Heritage Fund has been refocused to become “an independent contestable fund ... for voluntary protection of nature on private land”. <http://www.biodiversity.govt.nz/land/nzbs/pvtland/nhf.html>

- 29 There has been a proposal to reclassify some of the area as national park. DOC. 2009. *St James Conservation Area operational plan* (p. 10).
- 30 Recreation Reserves (416 ha), Historic Reserves (6 ha), Scenic Reserves (2,867 ha), Nature Reserves (7 ha), Government Purpose Reserve (102 ha), Conservation Parks (325,798 ha), Stewardship Area (326,398 ha). Information provided by DOC, 5 August 2013.
- 31 See Chapter 4 for a description of exchange and disposal processes under the Conservation Act 1987. Reserves are an exception – land held under the Reserves Act 1977 can also be exchanged after public consultation (s15), or disposed of if its reserve status has been revoked (ss 24 and 25).
- 32 Under the Ramsar Convention. The Ramsar Convention is an international treaty for the conservation of wetlands. Other wetlands listed under the Ramsar Convention are the Waituna Lagoon in Southland, Farewell Spit in Tasman, Firth of Thames and Whangamarino Wetland in the Waikato, and the Manawatu River estuary.
- 33 DOC Southland Conservancy. 1999. *Stewart Island/Rakiura National Park investigation*. Report to the New Zealand Conservation Authority, p. 7.
- 34 Most of the rest was formerly the North-West Nelson Forest Park. Department of Conservation, 1993. *Northwest South Island National Park Investigation*. Report to the New Zealand Conservation Authority, July 1993. Nelson/Marlborough Conservancy Management Planning Series No.5. p 200. Appendix A: Schedule of Land in Investigation Area.
- 35 DOC. 2009. *Matiri Valley and Plateau, Kahurangi National Park*. Department of Conservation.
- 36 Legally these decisions are made by the Minister of Conservation, but in practice, the great majority are made by the Director-General or other DOC staff under delegated authority.
- 37 The Conservation General Policy does, however, guide the commercial use, classification, disposal and exchange of stewardship land, which is discussed in subsequent sections.
- 38 Map 8: Kawatiri Place conservation outcomes. DOC. 2010. *West Coast Conservation Management Strategy*, p. 197.
- 39 These include frameworks like the Natural Heritage Management System (NHMS) and the Destination Management Framework (DMF), standards, and technical tools like Freshwater Ecosystems of New Zealand (FENZ) database.
- 40 *Land re-classifications – Stewardship areas*. Letter from Grant Baker for Director-General to the NZ Conservation Authority, 20 April 2005.
- 41 Conservation Act 1987, Part 3B.
- 42 Crown Minerals Act 1991, s61.
- 43 Department of Conservation, *Annual Report to 30 June 2012*, p. 41.
- 44 Some activities are directly prohibited; for example, heli-skiing in a wilderness area. Others are restricted in general policies, management strategies or plans. A concession will have conditions attached to it aimed at avoiding, remedying, or mitigating the effects of the activity on the conservation value of the land.

- 45 Conservation Act 1987, s17U(3).
- 46 Some categories, like wilderness areas, have very specific purposes in law. Others, like ecological areas, have less specific purposes in law, but the process of reclassification involves gazetting specific reasons for protection. For example the Orikaka Ecological Area was created to “*protect areas of low-altitude forests poorly represented in the Buller and Reefton Ecological Districts and important roroa/great spotted kiwi and other forest bird habitat*”. New Zealand Gazette 28 June 2001.
- 47 Meridian Project Manager, quoted in “*Dam opponents take to the water*”, Nelson Mail. 25 October 2010.
- 48 Institution of Professional Engineers NZ (IPENZ). 2011. *Realising our hidden treasure: Responsible mineral and petroleum extraction*, p. 14.
- 49 Conservation Minister Dr Nick Smith. 23 May 2013. *Denniston coal mine gains access approval*.
- 50 Crown Minerals Act 1991, Schedule 4. The Schedule lists a number of land categories considered to be incompatible with mining, including national parks, wilderness areas and nature reserves. Less than 1 percent of the land covered by Schedule 4 is stewardship land. It is on the Coromandel Peninsula, and on Great Barrier Island and other islands in the Hauraki Gulf.
- 51 The Crown Minerals Amendment Act 2013 changed the decision maker from the Minister of Conservation to both ministers. It also added a requirement for economic benefits to be considered and a requirement for public consultation. The Parliamentary Commissioner for the Environment published a report on this topic in 2010 called *Making difficult decision: mining on conservation land*.
- 52 Land classified as reserves can also be swapped under s15 of the Reserves Act 1977. However, such exchanges are subject to relatively tight restrictions and a public consultation process, and appear to have been limited to small boundary adjustments. Marginal strips can also be exchanged in limited circumstances.
- 53 Conservation Act 1987, s26(2). The High Court has clarified that the Minister of Conservation must be satisfied that the stewardship land is no longer required for conservation purposes before it can be disposed of. The Court also found that social and economic factors cannot be considered. *Buller Electricity Ltd v Attorney-General* [1995] 3 NZLR 344
- 54 Policy 6, *Conservation General Policy*. DOC. 2005.
- 55 Minister of Conservation, 19 August 2010, Response to Question for Written Answer 25988 (2010) from Kevin Hague MP to the Minister of Conservation.
- 56 Conservation Act 1987, s16A.

- 57 Exchanges are also used to rationalise high country conservation land following purchase or tenure review, and some have involved large areas. For example, in 2009, 1,408ha of pasture land acquired in the purchase of the Michael Peak pastoral lease was exchanged for 2,856ha of tussock land to improve the boundaries of the Oteha Conservation Park. The Otago Conservation Board supported the exchange. DOC. 2009. *Proposed land exchange – part Michael Peak Station for Timber Creek freehold land*. Otago Conservation Board report 0916, agenda item 9.4 for meeting of 18 September.
- 58 Department of Conservation. 3 October 2007. *Submission to Conservator Northland: Exchange of land – Kerikeri Airport – Far North Holdings Ltd*. PAL-06-01-08, Case No. 07/28.
- 59 DOC. 11 April 2011. *Submission to Minister of Conservation (Delegated to Conservator): Exchange of conservation land for other land*. PAL-06-10-04, DOC-DM-726189.
- 60 Conservation Act 1987 s18. Note that DOC uses the terms reclassification and recategorisation interchangeably. DOC. 2013. *SOP categorisation of protected areas manual v1*, p. 20.
- 61 Following the Crown Minerals Amendment Act 2013 the reclassification of stewardship land areas into categories of conservation land that are included in Schedule 4 must be approved by Cabinet (and then created by the Governor-General by Order in Council). The Conservation General Policy 6(b) sets out the basis for advice by DOC staff on potential reclassifications. The process for reclassification includes consultation with the public. Note that reclassification of national parks requires an Act of Parliament.
- 62 DOC. 1999. *Land status changes: Advice to the NZ Conservation Authority meeting on 13-14 October 1999*, p. 3.
- 63 This is prompted in a template for all new conservation management strategies prepared by DOC in 2012. “Policy 3.1.3: Ensure the classification or statutory purpose of public conservation land and water reflects its values. [List Places that are a priority for reclassification either in a table here or in Part Two and explain why the lands/waters should be reclassified.]” DOC. 2012. *CMS template – final*. DOC-DC-1142993, p. 30.
- 64 DOC, 2012, Conservation Management Strategy Waikato Conservancy 2014-2024, Draft December 2012, volume 1, policy 2.2.19, p.62.
- 65 DOC, 2012, Conservation Management Strategy Auckland Conservancy 2014-2024, Draft December 2012, volume 1, policy 2.6.12, p.66.
- 66 Meridian Project Manager, quoted in “Dam opponents take to the water”, Nelson Mail. 25 October 2010.
- 67 Under the Conservation Act 1987 such permission is given (or not) by the Minister of Conservation. In practice, such decisions have usually been made by DOC staff under delegation from the Director-General of Conservation acting under delegation from the Minister.
- 68 *Submission to Minister of Conservation: Delegated to the Conservator on the proposed Mōkihinui exchange*. Final draft, undated, PAL 06-11-38.

- 69 The gorge is bordered by stewardship land. Further inland the river flows through an ecological area. Between the gorge and the sea, the river flows through private land.
- 70 Three areas of land were collectively offered in exchange for the gorge. The first was Sawyer's Creek, a 711ha coastal ridge block north of the Mōkihinui River mouth, adjacent to a protected ecological area and scenic reserve. The second was Podge Creek, a 69. ha area containing stands of tall forest, east of Seddonville. The third was Waimangaroa Bush, 13.5ha of broad-leaved forest, about 30 km south of the mouth of the Mōkihinui River; this was assessed as having high conservation value. Overall, DOC believed the 794ha of freehold land offered in exchange by Meridian had only moderate conservation values. *Submission to Minister of Conservation: Delegated to the Conservator on the proposed Mōkihinui exchange.* Final draft, undated, PAL 06-11-38.
- 71 "... [T]he bed of the Mokihiinui River is not part of the public conservation land included within the exchange. However, the freshwater values of the tributary streams flowing through the conservation land are required to be considered in assessing the exchange." *Submission to Minister of Conservation: Delegated to the Conservator on the proposed Mōkihinui exchange.* Final draft, undated, PAL 06-11-38.
- 72 See Parliamentary Commissioner for the Environment. 2012. *Hydroelectricity or wild rivers: Climate change versus natural heritage* (p. 64). In this report, the Commissioner recommended that DOC officials be directed by the Minister to investigate transferring the administration of riverbeds located within conservation land from LINZ to DOC.
- 73 The \$1.4 million total cost comprised \$356,726 for preparing and giving evidence at the resource consent hearing, \$1,055,728 preparing for the appeal to the Environment Court, and \$22,247 for considering the proposed land exchange. Letter to the Parliamentary Commissioner for the Environment received from DOC, 28 June 2013. The Royal Forest & Bird Protection Society (Forest & Bird), WhitewaterNZ, and the West Coast Environment Network also appealed the decision.
- 74 In February 2008, DOC had submitted a conservation park proposal covering the Mōkihinui Gorge to the Minister of Conservation. The proposed Kawatiri Heritage (Conservation) Park would have included 147,000ha of conservation land (half stewardship land and half ecological area). The Minister was given options to approve, amend or decline the proposal, but it appears that no decision was made. DOC. 7 February 2008. *Declaration of the Kawatiri Heritage (Conservation) Park. Departmental submission.*
- 75 "However, our recent commercial review of the project determined it was not prudent to proceed further given the high costs and the risks of the process involved..." Meridian Energy. 22 May 2012. *Meridian exits Mokihiinui Hydro Project.* Meridian press release.
- 76 Porters Ski Area is operated under a concession in the form of a lease from DOC.
- 77 In a letter from the Nature Heritage Fund to the Minister of Conservation on 3 May 2004. See DOC. 8 February 2011. *Departmental submission to Minister of Conservation: Blackfish exchange proposal*, p4.

- 78 Negotiations between DOC and Blackfish continued for some time. DOC sought advice about the viability of a 49–60 year lease (a form of concession) instead of an exchange. Blackfish advised DOC that the development could not go ahead with a lease because they believed they would not be able to secure funding for the project. DOC. 21 February 2011. *Submission to the Director General*, Report on a proposed exchange under Section 16A of the Conservation Act 1987 – Crystal Valley – Steep Head Gully, Upper Porters Valley, Crystal Stream., pp. 22-23.
- 79 Blackfish's application contained 20 separate documents including 5 consultant reports. DOC's report contained 10 technical staff reports and 3 consultant reports. DOC. 21 February 2011. *Submission to the Director General*, Report on a proposed exchange under Section 16A of the Conservation Act 1987 – Crystal Valley – Steep Head Gully, Upper Porters Valley, Crystal Stream., pp. 1-3
- 80 DOC. 21 February 2011. *Submission to the Director General*, p. 6.
- 81 Letter from Director-General of Conservation to Blackfish Limited dated 11 March 2011. The package finally agreed to included 10 years of weed and pest control in Steep Head Gully, a public access easement over Crystal Basin, and a memorandum of encumbrance to protect conservation values.
- 82 DOC. 8 February 2011. *Departmental submission to Minister of Conservation: Blackfish exchange proposal*, p4. This submission was signed by the Minister on 21 March 2011.
- 83 DOC. 21 February 2011. *Submission to the Director General*, Report on a proposed exchange under Section 16A of the Conservation Act 1987 – Crystal Valley – Steep Head Gully, Upper Porters Valley, Crystal Stream, p. 23.
- 84 The Canterbury Aoraki Conservation Board was consulted as required by section 16A(2) of the Conservation Act 1987. Williams, D. 10 August 2010. DOC mulls ceding 200ha for field. The Press.
- 85 DOC. 21 February 2011. *Submission to the Director General*, Report on a proposed exchange under Section 16A of the Conservation Act 1987 – Crystal Valley – Steep Head Gully, Upper Porters Valley, Crystal Stream., p. 24. The Nature Heritage Fund was consulted due to its role in the original purchase for the Crown.
- 86 The Ngāi Tahu Claims Settlement Act 1998 gives Ngāi Tahu 'first right of refusal' when Crown land is sold in its rohe, but has a list of exceptions. Land exchanges under s16A of the Conservation Act 1987 is an exception. DOC. 21 February 2011. *Submission to the Director General*, Report on a proposed exchange under Section 16A of the Conservation Act 1987 – Crystal Valley – Steep Head Gully, Upper Porters Valley, Crystal Stream, p 28. On 21 December 2010, the Canterbury Conservator wrote to Te Rūnanga o Ngāi Tahu agreeing that "some clarification of exchanges in relation to the Ngāi Tahu Settlement Act 1998 would be useful, but probably would not be resolved before this particular proposal was considered." DOC. 8 February 2011. *Departmental submission to Minister of Conservation: Blackfish exchange proposal*, p 5.

- 87 The exchange provision in the Conservation Act 1987 (section 16A) enables exchanges of “land”, but does not mention “interests in land”. In contrast, the disposal provision (section 26) explicitly enables disposal of both “land” and “interests in land”.
- 88 Letter from Forest & Bird to the Director-General of Conservation, 16 August 2010. However, Forest & Bird did not challenge the eventual decision through a judicial review, so the legality of the land swap has not been tested in court.
- 89 The land swap did result in some increase in protection to Steep Head Gully – Blackfish committed to fencing out stock and to ten years of weed and pest control. However, Steep Head Gully is managed under various policies as an indigenous coastal forest. At the national level the New Zealand Coastal Policy Statement 2010 has part of the purpose of Objective 1 as “*protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand’s indigenous coastal flora and fauna*”. In the Banks Peninsula District Plan, Steep Head Gully is classified as an Interim Outstanding Natural Features & Landscape Protection Area. This category represents “*those areas with the most significant values assessed in relation to the statutory requirements of Section 6(b) of the Resource Management Act and which require protection from inappropriate development and subdivision*” (Chapter 13, Banks Peninsula District Plan).
- 90 Conservation Law Reform Bill 1989, cl 11.
- 91 Conservation Act 1987, Section 16A is the exchange provision for stewardship land. An exchange provision was also introduced for ‘marginal strips’ – narrow strips of land alongside rivers allowing public access (s24E). Conservation land classified as reserves can also be exchanged; the provision for this is section 15 of the Reserves Act 1977 which predates the Conservation Act.
- 92 Environmental organisations objected strongly to clause 11 in the amendment Bill – “... *this proposal was not intended to be applied to all classes of conservation land. In particular, it was not to apply to protected land but only to stewardship land.*” Section 7.2, Submissions on behalf of the Maruia Society in respect of the Conservation Law Reform Bill, PD/90/99. “*Conservationists will not be satisfied with the provisions that are made in this Bill ... especially in regard to: 1) the freedom given to the Minister to dispose of by exchange, any conservation area, protected areas included.*” Section IV.10, Environment and Conservation Organisations of New Zealand, 12 September 1989.
- 93 Conservation Act 1987, s16A(2).
- 94 A Bluegreen Vision for New Zealand, Discussion paper by Hon Dr Nick Smith MP, 2006.
- 95 See Conservation General Policy – Policy 6: Changes to public conservation lands. The principles for making decisions on *exchanges* of land are the same as the principles for making decisions on *acquisitions* of land. Consequently, only the gains from an exchange are to be considered.
- 96 The provision for the *disposal* of stewardship land (s26) explicitly includes “*any interest in any land*”, but the provision for the *exchange* of stewardship land (s16A) does not. Yet the legal advice received by DOC in the Crystal Basin case was that the legal definition of ‘land’ includes ‘interests in land’, and so a land swap can include the latter.

- 97 Conservation Act 1987, s16A(7): *"Nothing in section 26 [disposal] or section 49 [public consultation] shall apply to the exchange of land under this section."*
- 98 Crown Minerals Amendment Act 2013, Section 42(2).
- 99 Conservation Act 1987, s16A(2). In 1989 when the Conservation Law Reform Bill was under consideration, DOC advised the select committee that the Minister was unlikely to proceed with a land swap if the local Conservation Board opposed it. Conservation Law Reform Bill: Report to the Planning and Development Select Committee by Officials of the Department of Conservation, 27 October 1989, p. 47. The proposed Mōkihinui and Crystal Basin land swaps were strongly opposed by the West Coast Tai Poutini Conservation Board and the Canterbury Aoraki Conservation Board respectively.
- 100 Woollaston, P. 2011. Origins of the legislation and policy relating to minerals in conservation areas. *Policy Quarterly*, 7(1): p. 4.
- 101 DOC. 2013. *A more systematic approach to identifying conservation priorities*.
- 102 Moreover, some of the most rare and endangered of these ecosystems are on stewardship land. A technical report accompanying DOC's annual report concludes that *"improved conservation status is merited"* where more than 20% of the threatened ecosystem is classed as stewardship land. Landcare Research. 2012. *Department of Conservation biodiversity indicators: 2012 Assessment*, p. 39; and DOC. 2012. *Annual report for the year ended 30 June 2012*, p. 20.
- 103 Prime Minister Helen Clark. 8 October 2008. *Government protects magnificent high country property*. Press release.
- 104 There are two other World Heritage sites in New Zealand – Tongariro National Park and the Sub-Antarctic Islands. World Heritage List. <http://whc.unesco.org/en/list>. [Accessed 30 July 2013]
- 105 DOC. 2007. *Te Wāhipounamu – South West New Zealand World Heritage Area*.
- 106 DOC. 2005. *Conservation General Policy*. Policy 6(b), p. 30.
- 107 Since 1999, reclassifications that would *"bring the status of the land more accurately into line with its values (i.e. reflect its legislative fit)"* are *"lower priority"*. DOC. 2013. *SOP categorisation of protected areas manual v1* (p. 25).
- 108 These reasons emerged during interviews with DOC staff and were confirmed in an email exchange on 18 July 2013.
- 109 A recent change to the law to require approval by Cabinet (rather than the Minister of Conservation) for any reclassification that would prohibit mining (i.e. be covered by Schedule 4 of the Crown Minerals Act) has also made the process of reclassifying into some categories more onerous (Conservation Amendment Act 2013, s6).
- 110 For example, a DOC manager reportedly described St James Conservation Area – a large area purchased by the Crown in 2008 that has been left as stewardship land – as *"a test case for a new, more commercially driven approach to the South Island scenic splendour, one where DOC is being challenged to see green values, recreation and economic development going hand in hand"*. McCrone, J. 6 November 2008. Unexplored playground. The Press.