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Tourism concessions in National Parks: neo-liberal tools for a Conservation Economy in New Zealand

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Introduction

National Parks (NP) constitute a major attraction for tourism and recreation in New Zealand. The Department of Conservation (DOC) is responsible for nature conservation in NP, based on the 1980 National Parks Act, the 1987 Conservation Act and all legal revisions of these Acts. DOC is also responsible for the development of recreational facilities “to the extent that any use of any natural or historic resource for tourism and recreation *is not inconsistent* with its conservation”; this responsibility is clearly formulated as “*to foster* the use of natural and historic resources for recreation and *to allow* their use for tourism” (Part II, section 6e of the 1987 Conservation Act; italics placed by the author). In order to conduct a tourism business on public conservation land companies need a concession (permit, license, or lease). These are approved by the Conservation Minister, the Director General, their delegates or DOC regional staff. The latter are also responsible for developing and implementing NP Management Plans, and for monitoring and enforcing the activities of tourism concessionaires.

DOC’s statistics show that visitor numbers have increased steadily over the past decades across NPs (DOC, 2011a). The country’s tourism marketing agency Tourism New Zealand and the Ministry for Business, Innovation and Employment (MBIE, hosting the Tourism Policy Group) have ambitious targets to increase the share of international visitors using NP, from 46% in 2007-2008 (1.1 million people) to 50% by 2016/2017 (DOC, 2011a:30). Governmental and legal documents encourage New Zealanders to engage in outdoors recreation. DOC’s target to increase the number of New Zealanders using NP is to see an increase from 18% of the population in 2008/2009 (0.8 million people) to 33 % by 2016/2017 (ibid. pp.30).

This trend in increased visitation overlaps with a recent political trend to change the role of the state and DOC’s institutional priorities in relation to recreation and tourism in nature areas. The idea is that DOC should move from ‘allowing tourism’ to ‘*enabling tourism*’ (DOC, 2010), while commercial concession fees should increase their contribution to DOC’s budgets (Treasury, 2012). Political decision-makers of neoliberal orientation, who returned to govern New Zealand in 2009 (the National Party and its coalition partners), argue they are mindful of the importance of nature quality for tourism, but that - with a third of the

country's land being part of NPs - a Conservation Economy should be possible and successful, provided that public and private actors engage in effective collaboration (New Zealand Government, 2012). The post 2009 governments have implemented a Business Growth Agenda, which has a Program on Building Natural Resources.

The Resources Program is led by the Ministers of seven Ministries/Departments that are either responsible for the management of natural resources (marine and terrestrial) or are managing economic sectors that depend on such resources. This group includes the Conservation Minister, the Environment Minister, and the MBIE Minister. The program aims to increase the contribution of all economic sectors relying on natural resources to 40% of national GDP by 2015; this is referred to as "greening growth" or "sustained growth from natural resources" (New Zealand Government, 2012:5;7) that should underpin the New Zealand model of Conservation Economy.

For the tourism sector the government aims to "*Grow the number of new business opportunities on public conservation land in order to deliver increased economic prosperity and conservation gain*" (New Zealand Government, 2012: 23). In relation to this objective, the 2013 progress report to Government on the Business Growth Agenda mentions that DOC and MBIE have already implemented changes to the concession regime, which were implemented as part of two bills (2010, 2013) to amend the 1987 Conservation Act, (New Zealand Government, 2013:22). The change in the concession system is only one of several key changes implemented by DOC; but it was the first one, initiated by the Conservation Minister by means of a Concession Reviewing Process (DOC, 2010). The Conservation Chapter of the 2013 Treasury Budget Report signals that, in exchange for the new business opportunities, those obtaining DOC concessions are expected to start contributing to DOC's work on biodiversity conservation (such as pest trapping, native flora and fauna breeding/repopulation) and the maintenance of facilities and infrastructures used by tourism across the country (Treasury, 2013: 3;12-13).

Additionally, it is also hoped that concessionaires, communities, recreational user groups, and individuals will increase their contributions through donations and volunteer work to implement DOC's legal objectives (Treasury, 2012 and 2013; New Zealand Government, 2012). However, the Conservation Minister acknowledged that "Currently the pervading attitude by those operating on public conservation land is that they do so by 'right' rather than a privilege in which they are prepared to invest. Changing this attitude will require DOC to demonstrate and deliver real value in any established partnerships." (Treasury, 2013: 11).

In this context, the research question that emerges is: ***what are the prospects for sustainable tourism and recreation in the National Parks of New Zealand, given the recent shifts in regulation and governance to facilitate a Conservation Economy?*** This research question will be addressed by considering a number of sub-questions, which emerged not only from the above introductory considerations, but also from the wider literature review:

- What is the legal-institutional space available to the Department of Conservation to

influence the sustainable development of tourism and recreation in National Parks?

- How do the current National Park Management Plans and visitor planning framework guide the approval, management and monitoring of tourism concessions? What changes in these relationships can we see, or expect, following a shift to a Conservation Economy?
- How does the new concession regime look like, since 2009?
- Do the existing and new concession contracts deliver on the promise made by the neo-liberal decision-makers - that opening up conservation lands for tourism businesses will deliver biodiversity and environmental gains in National Parks?

The paper concludes with some policy recommendations based on the preliminary findings reported in this article.

Literature review and contribution to knowledge

Commercial concessions are key tool for managing tourism and recreation in NP sustainably. Countries use various visitor planning frameworks to manage National Parks. Table 1 reproduces the main frameworks used so far, as assessed along 6 criteria by Newsome et al (2002:81). New Zealand uses the Recreation Opportunity Spectrum, since 1993 (Taylor, 1993). Concession contracts are tools for implementing the planning frameworks set in NP management plans, which cannot derogate from higher level instruments such as Park strategies, national park policies and laws. Examples of activities for which concessions can be issued are: hiking/walking, boating, kayaking, motorized sightseeing or thrill-seeking from air or land, climbing, fauna/flora watching, skiing, caving, fishing, hunting etc. Some activities are not allowed in New Zealand NP such as jet-skiing. Examples of facilities/infrastructures are: roads, tracks, bridges, huts, camping and picnic sites, signage, toilets, shelters, etc.

Concession contracts are normally expected to comprehensively define the compulsory measures for environmental protection, biodiversity conservation, and ecosystem services' preservation/enhancement, as well as various rights such as the areas allowed to be visited, the times, group sizes, activities to be carried out, next to details of the public-private relationship. Given the importance of commercial concessions for the sustainability of tourism in protected nature areas, one would expect them to receive proper academic attention. However, the literature referring to NP concessions is remarkably scarce.

There are two literature streams. First, there are guidelines with recommendations on how to design tourism concessions properly, to serve sustainable development objectives, including the financing aspects (Eagles et al, 2009; Eagles et al, 2002; Font et al, 2004; UNEP-WTO, 2005; IUCN, 2000). Only the Eagles et al (2009) guidelines focus entirely on tourism concessions in protected areas. They offer detailed recommendations for NP managers on aspects to be included in contracts such as: the pricing policy; capital or infrastructural investments (if applicable); standards for customer service; qualifications required for staff, environmental guiding principles for all stages (planning, development, operations);

environmental and cultural education for visitors; procedures and costs for monitoring, enforcement, contract suspension and termination; the role of local communities in concessions, insurance, etc. The authors also encourage NP managers to insert best practice conditions such as biodiversity conservation measures; the use of renewable energy and fuels, at least for some minimum levels in their business; the use of the most environmentally friendly methods of wastes’ management, wastewater treatment and transportation (ibid pp. 48-60).

Planning framework	Suitable for regional planning. i.e. more than one nature area	Provides info. on impacts of visitor use, for management action	Specific provision for inclusion of stakeholders in planning	Responsibility / discretion action left to managers	Readily integrated with other forms of planning (e.g. tourism plans)	Results in a publishable stand-alone document
Recreation Opportunity Spectrum	XXX	-	-	-	XX	-
Limits of Acceptable Change	X	XX	XXX	XX	X	XX
Visitor Impact Management	-	XXX	-	XX	X	XX
Tourism Optimisation Management Model	XXX	XXX	XXX	XXX	X	XXX
Visitor Activity - Management Process	XXX	-	-	-	XX	-
Visitor Experience Resource Protection	XXX	XX	XX	-	XX	-

Table 1. Planning frameworks for tourism and recreation in nature areas (“XXX matches criteria very well; XX partly matches criteria; X poorly matches criteria; - does not match criteria”; source: Newsome et al, 2002:81)

Other guidelines refer to concessions’ design by offering useful examples. E.g. the UNEP-WTO guidelines consider that governments should use the opportunity to influence the behaviour of tourism concessionaires by attaching contractual conditions that “require compliance to the sustainability agenda” (2005:94). The handbook offers as example the option of linking the Certification Programmes to the concession process or criteria, as done in some Australian States; Tourism Queensland has been consolidating this link over the years, by means of small subsidies to businesses for necessary steps such as in-house training or auditing (UNEP-WTO, 2005:134). Further, the discussions on “Granting concessions and conferring rights” (ibid, pp. 165) are based on a short case-study from South Africa where the concession conditions often inserted in contracts require tourism businesses to implement particular measures for community benefit. E.g. all concessionaires in the Kruger NP are asked to demonstrate they’ve done their best to recruit and train at least 79% of their workforce from disadvantaged communities living in the vicinity of the

park. The South African concession regime has also been successful in securing funds for conservation, beyond the regular concession fees.

The second literature stream is that of academic publications. Here we find work that refers to concessions in the framework of wider discussions on options to finance nature areas' management (e.g. Laarman and Gregersen, 1996; Dinica, 2006; O'Toole, 1999; Shah, 1995). In addition, various journal papers and books (chapters) refer tangentially to other, non-financial, aspects of tourism concessions in NP (e.g. Wilson et al, 2009). The only study identified so far that focuses exclusively on the design of the concessions' regime from the standpoint of sustainability is that of Wyman et al (2011). Their short journal paper summarizes the finding of a study that engaged in a 'bird-eye view evaluation' of tourism concession agreements in 22 countries. However their study is exclusively based on document analysis. This has clear limitations as monitoring and enforcement could be a problem, as I will show in this paper. The authors used a framework consisting of 5 categories of analytical criteria, as reproduced in Box 1, based on the guidelines of Eagles et al (2002) and Ishwaran & Erdelen (1990).

- (1) Concessionaire qualifications. In order to make sure the PA makes a profit to help fund management operations, private sector entities interested in developing tourism concessions within protected areas should demonstrate their ability to be profitable.
- (2) Legalized responsibilities. A common authority granted to protected area managers (state- or community-owned) is the authority to terminate a concession contract for the breach or non-fulfillment of that contract.
- (3) Financial responsibilities. A concessionaire typically pays a user fee that can involve various forms from a set annual fee, a flat fee in conjunction with a percentage of the gross revenue, to a percentage of all revenue earned.
- (4) Environmental responsibilities. In an effort to support environmentally-responsible tourism practices, concessionaire contracts are increasingly involving measures to minimize environmental impacts. Depending upon the concession activity, contracts may require management plans for such areas as waste disposal, infrastructure development, water use and management, and recycling efforts.
- (5) Empowerment responsibilities. Local people will greatly influence the future of protected areas. Communities in and around PAs may depend upon natural resources within PAs for their livelihoods (e.g., agriculture and resource extraction). Therefore, a focus of national governments could be in the development of employment and small business opportunities, which also develop positive attitudes towards these areas.

Box 1. Five categories of provisions in tourism concessions to facilitate sustainable tourism.
Source: Wyman et al. 2011:918.

Wyman et al (2011) found that "the greatest weaknesses of best practices appear to be with concessions qualifications, legal and financial responsibilities, while the strengths included environmental and empowerment/social responsibilities" (pp. 913). Unfortunately this conclusion does not apply to New Zealand entirely. In their study, New Zealand performed the best on all four Concessionaire Qualification aspects considered (including financial capacity, tourism experience, educational level). However, New Zealand 'ticked no box' in the category of social responsibilities, and only two in terms of environmental responsibility: monitoring plan and risk analysis. The authors report that they did not find contractual

references on: infrastructural development, alternative energy, waste management, maintenance/repair responsibilities, environmental/community damage, contract non-fulfilment, fines, late payment charges, and income requirements. The positive assessments on the two environmental aspects do not seem to match well, however, the findings reported in this paper. They are also in contrast with analyses coming from New Zealand, documenting significant flaws in the processes for concession approval and management (see Johnson and Lloyd 2000 and 2002; PCE, 1997[a] and[b]), but which seem to agree with most limitations reported by Wyman et al. (2011) on the empowerment aspects. At the same time, the author has found plenty of evidence that concession contracts for New Zealand's NPs contain proper provisions on the aspects of contract non-fulfilment, fines, and late payment charges. Therefore, document-based, large-N evaluations have limits to what they can reveal. Case-studies reporting on in-depth analyses of concession regimes, contracts and implementation, such as offered in this paper, are essential, on the background of the severely under-developed academic literature.

Research methods

This paper is only one of a larger number of publications that will be submitted to journals and conferences in New Zealand and internationally. It draws on fieldwork and desk-work carried by the author during her Research Leave from July 2013 to February 2014. The Research Leave focused on the policy and governance aspects of sustainable tourism in five South Pacific states (New Zealand, Tasmania, Vanuatu, Fiji and Samoa). The research methods underpinning the empirical findings reported in this paper are the same ones used for the entire fieldwork in New Zealand: document analysis and interviews. Document analysis included: a) the review of the empirical literature on this topic (academic literature; reports for/by DOC; unpublished dissertations; national journal and conference papers); b) the analysis of the past and revised legislative frameworks regarding NP management, DOC' policies on concessions and the Management Plans and Strategies for a selection of 3 NP: Westland, Mount Cook/Aoraki, and Mount Aspiring (together with Fiordland they form the UNESCO South-West Wilderness Heritage Area).

In addition, 28 interviews were carried out in the period November 2013 - February 2014. The research participants were from: DOC Head Office staff in Wellington (4 persons) and the regional centres (4 persons); holders of tourism concessions in NPs (14 persons), representatives of the public in DOC regional Conservation Boards (3 persons, one from each NP); representatives of NGOs (4 persons). Given that for some interviews confidentiality was requested, all interviews will be treated as such in this paper. Whenever permission was given, interviews were audio-recorded. In this paper, due to size limitations, it was not possible to invoke the whole wealth of information gathered through interviews. Accordingly, the interviewee list at the end of the paper only includes those who provided information of interest for the research sub-questions formulated in the Introduction.

This research was approved by the Human Ethics (Pipitea) Committee of Victoria University of Wellington. One of the conditions involved is that research participation is absolutely voluntary. As fieldwork was carried out during summer, many small businesses were understaffed and unable to contribute. However, larger concessionaires also declined especially businesses involved in aircraft-based sightseeing. In the Mt. Cook/Aoraki NP, the General Manager of the largest concessionaire also declined, sending a list of 10 companies in the Park I was not welcome to interview (covering accommodation, transportation, air services, and many other activities available in Mt. Cook/Aoraki NP; no reason was offered).

DOC's (in)ability to manage tourism and recreation sustainably in National Parks

This section explains that DOC's ability to manage TR sustainably in NP has been seriously limited historically, while no changes were made lately with this regard. DOC has visitor strategies and planning tools available to influence 'who goes where, when and for what reason', once visitors come to NP. But these tools only enable DOC to 'micro-manage' Parks, zooming-in per Park, ROS zone, visitor/concessionaire type, one at a time. *DOC is legislatively and institutionally poorly equipped to manage its Conservation Estate holistically, by considering the cumulative effects of tourism and recreation and the precautionary principle of sustainable development; it doesn't have adequate legal mandates to manage NP sustainably in important respects: environmental, financial and social.*

Regulatory in-coherences have not been compensated by adequate coordination and collaboration with tourism authorities and various relevant public and private organizations, in the design and implementation of their own policies. *At governmental level, there remains a fundamental disconnect between international tourism policies, recreation and outdoors policies targeted at New Zealanders, the regulatory and policy frameworks for biodiversity conservation, the environmental legislation and policies on climate and energy.*

The 2001 National Tourism Strategy (renewed in 2007, to end in 2015), has attempted to pull relevant public actors in a 'whole-of-government' approach, while engaging with the tourism industry proactively (MT et al, 2007). However, the operationalization of this whole-of-government concept seems just another packaging for market-led development, rather than a holistic sustainability approach (as recommended in the UNEP-WTO, 2005 guidelines): *the neo-liberal government's idea is that the whole of government should support businesses and visitor needs.* E.g. the Implementation Plan of the Strategy mentions that DOC and other authorities should "make sure that there is enough investment in the infrastructure needed to meet growing visitor demand. This includes roads (...) water supplies, managing waste water, public toilets, signage and car parks" (MT et al, 2007:7).

While some progress has been achieved at industry level, thanks to this Strategy, through variable levels of uptake by some tourism businesses of environmentally/socially-friendly initiatives, there are too few such examples (publicly available) among NP concessionaires

(see sections below). The above assessments rest not only on the author's examination of the relevant documents and empirical evidence, but also from the already vast literature offered by leading New Zealand academics and consultants, and contributions to public debates through governmental submissions from NGOs, interested individuals, and even current and former DOC staff (e.g. in PCE 2007[a]; Zahra, 2006; Jones et al, 2003; Shone and Memon, 2008; Cloesen, 2003; Simpson 2003; Kearsley, 1997; Lunn, 1994; Johnson and Lloyd, 2000 & 2002; DOC, 2008, etc).

Two 'legal inabilities' are important from the standpoint of managing tourism and recreation in National Parks sustainably: tourism planning and funding options. DOC does not have a legal mandate to influence how many international visitors and New Zealanders arrive at the Conservation Estate gates. Since the countrywide deregulation of most economic sectors in the 1980s and early 1990s, tourism planning has been slowly but surely abandoned at national level (Lunn, 1994; Zahra, 2006; Shone and Memon, 2008). Tourism marketing was done in the past by the former Ministry of Tourism and New Zealand Tourism Board. More recently, the private-public partnership Tourism New Zealand is pushing the governmental Business Growth Agenda for substantial increases in international tourist visitation, especially from China (New Zealand Government, 2013).

But how can DOC harness the necessary financial resources to maintain and enhance the facilities likely to be needed by the millions of visitors expected in the future? Here comes the second 'legal inability' affecting the Department: it is unable to impose Entry Fees for NP, based on the 1980 National Parks Act. It can only recover its visitor related costs from the general budget, hut fees, campsite fees, car-park charges, information and educational services/materials, and various concession fees from both touristic and non-touristic businesses. However, by 2000, the 4000 concessions managed for all economic sectors only generated less than 15% of its budget, because DOC reported raising "around \$23.6 million per annum from fees, charges and other forms of 'external' revenue" which "represents approximately 15% of the total budget of the Department" (IUCN, 2000:49). Calculations based on data published in the Concession Process Review (DOC, 2010:19) show 43% of concessions come from tourism, totalling 1,590 concessions.

A 2012 public document mentioned that "DOC's operating expenditure in 2010/11 amounted to \$317 million of which nearly 50% is made up of personnel costs. DOC generated \$34 million of third-party revenue. Its net assets as at 30 June 2011 were \$558 million" (Office of the General Auditor, 2012:4). The above data suggest that, while the third-party revenue increased in absolute terms since 2000, it dropped in relative terms to 10.7% of the operating expenditure. By comparison, tourism and recreation expenses accounted for 42% of DOC's annual budget in 2010/2011 (Office of the General Auditor, 2012: 8;14). In a response to a Parliamentary Select Committee inquiry into the operations for the 2010/11 financial year, DOC indicated that the revenue from all types of economic concessions for the whole Estate was NZ\$13,833,000 (DOC 2011b:17). This is less than half (41%) of the \$34 million of third-party revenue in 2010/11.

This situation does not seem defensible in the long term, considering that there are only 4.5 million people residents in New Zealand (not all taxpayers; <http://www.stats.govt.nz>). Some infrastructure statistics are useful to place this in context: “the walking tracks managed by the Department stretch for 14,200 km, about 3000 kilometres further than the state highway network and, along the way there are 950 huts”, (DOC, 2011b:25), 324 campsites, 13,144 structures (bridges and boardwalk), 487 picnic areas and 2,408 km road and 4W tracks (DOC, 2013a:36). The fact that international tourists are intensive users of the facilities managed by DOC is generally acknowledged (DOC, 1996; Treasury, 2012).

During 2013 the West Coast communities and national stakeholders for the Westland NP were shaken by the regional DOC office’s proposal for a Partial Review of the Westland Management Plan (West Coast Conservancy, 2012). The Fox and Franz Josef glaciers are major international tourism attractions, but they have been retreating since 2009. While climate change has been known to have such effects, the Westland DOC office invited public submissions on questions envisaging two carbon intensive responses to glacial retreat: an increase in the landings of helicopters for sightseeing and hiking across/along the glaciers, and a road extension. The road plan envisaged the extension of the current road from the Franz Josef car-park to the glacier face, along the popular 3 km walking track.

The absence of credible justifications by DOC Westland of the proposed changes was remarkable (see West Coast Conservancy, 2013). Besides, some concessionaires argued that access to the new road extension should be offered only to tourism businesses that will receive concessions; no private/recreationist access, though the road was to be funded with taxpayer money. Interviews with stakeholders converged to suggest that road extension ideas came from tourism businesses wishing to serve the growing market of international tourists who are not used to walking and are not willing to venture more than 10-15 minutes from the bus to see an interesting site (Interviewees A, B).

Therefore, having in view that DOC is unable to introduce NP Entry Fees, the issue of free/easy riding by international visitors and tourism concessionaires on the infrastructure financed by taxpayers and managed by DOC remains serious. Naturally, there is the argument that next to taxpayers, concessionaires and their clients contribute financially through concession fees. However, the above numbers suggest this argument is very weak. It would be helpful if the Department could publish more specific information on the financial value of tourism concessions: what is their contribution to DOC’s annual budgets? DOC’s reports typically mention financial information in ways whereby revenue streams are either aggregated too much, or disaggregated so that this number cannot be traced.

DOC’s inability to set NP Entry Fees and the lack of political will to implement other financial instruments has more serious implications than free/easy riding by internationals and concessionaires. The very existence of some infrastructures in the more remote areas, frequented by New Zealanders, seems at risk, as the post-2009 Conservation Ministers consider channelling funding with priority for the maintenance of the most used facilities.

This emerges from the Minister’s 2013 Budget Report, when referring to Backcountry areas: “The condition and functionality of the visitor asset groups are (...) predicted to decline to ‘poor’ and ‘partial’ over the next 5 years (...) To enable DOC managed destinations to appeal to a wider potential audience, *the quality of facilities and services at some locations may have to increase, such as those forming part of the tourism network*, and destinations intended to attract families and people new to the outdoors.” (Treasury, 2013:12-13).

The planning framework surrounding tourism concessions: further system cracks

Understanding DOC’s legal-institutional space available to influence NP visitation and financial management is crucial for a proper assessment of the recent revisions of the concession regime. Above is a sketch on constraints for the Department. But what *can* DOC do to manage tourism and recreation properly, in this context? Operationally, DOC manages NP visitors by means of the already mentioned Recreation Opportunity Spectrum framework and commercial concessions. According to DOC (2003:38), “The term ‘recreation opportunity’ is used to describe the mix of settings at the places where people visit and the recreation activity they undertake there.” In each NP various zones are distinguished that require different levels of biodiversity and nature protection. The less protection is needed, the more facilities and activities (in terms of both number and diversity) may be allowed for tourism and recreation (Taylor, 1993). Table 2 shows how the framework was implemented with respect to two NPs (Mount Aspiring Park is larger and uses a more complex system).

Mount Cook/Aoraki	Westland/Tai Poutini
1. Backcountry remote; 2. Backcountry walk in; 3. Backcountry accessible - motorized; 4. Front-country – short-stop; 5. Highways, roadside opportunities and visitor service sites	1. Remote Experience 2. Backcountry with Facilities 3. Front-country with Facilities 4. Highways, Roadside Opportunities & Visitor Service 5. Intense Interest Sites

Table 2. Operationalizations of ROS framework (Sources: Canterbury Conservancy, 2004:215; West Coast Conservancy, 2008).

Each NP Management Plan needs to specify what kinds of facilities and activities are allowed, to what extent, in each ROS zone. Management Plans also specify which activities and facilities may be commercially offered. When they are offered commercially, policy documents often use the term ‘tourism’, while when they are undertaken privately/independently, the term normally used is ‘recreation’ (Cessford and Thomson, 2002). This is important to keep in mind, as the original (and still legally valid) mandate for DOC is “*to foster* the use of natural and historic resources for recreation and *to allow* their use for tourism” (Part II, section 6e of the 1987 Conservation Act). As illustration, in the Mount Cook/Aoraki Front-country, the maximum group size should be 60 persons, while in the Remote Backcountry the maximum party size is 8, as shown in Table 3. Rules may be different for recreationists and tourists. At the often crowded Muller Hut in the Walk-in

Backcountry of Mount Cook, private groups of recreationists may be as large as 15 people; but a concessionaire may only bring maximum 7 tourists to this public hut. The rule was implemented to deal with the problem of displacement of New Zealand recreationists by international guided visitors (Canterbury Conservancy, 2004), who represent about 70% of the annual visitors to this NP (Booth and Cullen, 2001: 332). Other criteria helping to differentiate among various ROS zones are: accessibility (proximity to road, terrain features); types of visits and visitors; expected visitor interaction levels; visits' duration; aircraft management; management of perceptions of overcrowding and noise effects, natural views, and the 2 concession aspects reproduced in Table 3, as illustrations for Mount Cook/Aoraki.

ROS criteria	Front country	Backcountry Accessible/Motorized	Backcountry Walk-in	Backcountry Remote
Accessibility	Popular stopping place or short walks from sealed roads or road end parks.	On- and off-track terrain more accessible by being close to gravel roads, 4wd vehicle tracks, or aircraft landing sites.	Usually involves over 1-2 hours walking along a track from a vehicle. Visitor numbers and interactions are of such frequency to prevent a sense of isolation for most visitors.	Generally accessible by over 5 hours walking along a track, or a lesser time where off-track travel requires outdoor skills and heightened risk acceptance and where the level of use is low and likely to result in achieving a sense of isolation or remoteness for many visitors.
Concessionaire effects management	Avoid, remedy or mitigate effects by setting conditions.	Avoid and mitigate effects.	Avoid effects as far as possible	Concessionaire activity to be indistinguishable from other approved activities.
Concessionaire operations	Concessionaire activity allowed in all ROS classes, subject to conditions to avoid, remedy or mitigate adverse effects, including compliance with the ROS class criteria. Concessionaire client activities not to be advantaged or disadvantaged compared with those for non-concessionaire visitors, unless there is a clear specified reason for different visitor type management (e.g. as at Mueller Hut).			
Aircraft management [See footnote 4]	Aircraft landings and overflights (i.e. those that are sufficiently low-flying and/or noisy as to annoy ground-based visitors) should only occur at numbers that reflect the expected visitor interaction levels. The numbers should reduce across the spectrum, from highest within "backcountry accessible-motorized" to lowest in "backcountry remote", some areas being managed as 'aircraft free', and the more-remote areas preferably having minimal aircraft activity and no landings. There is generally no reason for any aircraft landings within "front country (short stop)". Parts of the National Park clearly have aircraft activity in excess of that desirable in terms of the ROS guidelines. Section 4.3.3 Aircraft and Airports addresses aircraft management in a way that seeks to maximise ROS guidelines compliance while acknowledging existing contractual requirements and visitor use patterns.			
Management overcrowding perceptions & noise effects	Undertake visitor surveys to determine annoyance levels for crowding and aircraft noise, and undertake management to achieve 25% or less of visitor annoyance (see Explanation 4.3.3(b), (c) & (d) 7). The <25% figure will be applied across all ROS classes, irrespective of differing visitor numbers, due to the different experience expectations by visitors to each ROS class.			

Table 3. ROS criteria summary on concessions in Mount Cook/Aoraki National Park. (Source: Canterbury Conservancy, 2004:215.)

The last two rows in Table 3 refer to the issue of aircraft noise pollution. The problem affects many South Island Parks, but has been historically high in Mount Cook and Westland Parks. Both Parks use the threshold indicated in the last row. However, DOC is limited in the management measures it may undertake as it has no legal competences to regulate access to, or the patterns of airspace use, above the Conservation Estate. If the activity does not compromise the envisaged biodiversity conservation outcomes, DOC is in a weak position to reject or limit concession activity, although it is legally responsible to manage NP so as to

preserve the visitor experience of remoteness and natural quietness, especially in some Backcountry areas (NZCA, 2005). The management challenge is suggested in “footnote 4”, in Table 3 saying: “The ROS settings are mapped in recognition of all the ROS criteria, and the main areas where *aircraft activity exceeds the criteria but management action to remedy this is not feasible in the near future*”. The text in italics emphasised by the author indicates that NP Plan zoning (on which concession activity eligibility should be assessed) was done in acknowledgement of the already existing negative impacts from aircraft concessions. Aircraft concessionaires responded by adopting voluntarily a code of conduct in the 1900s, (revised later: CAA, 2011), whereby the new flight routes, styles and times led to reductions in the reported visitor annoyance (Canterbury Conservancy, 2004).

However, in the Westland Park the management measure taken during 2013 was surprising. DOC Westland had already lifted the number of helicopter landings allowed to concessionaires operating on the Franz Josef glacier, justifying this as emergency adaptive action due to glacial retreat (West Coast Conservancy, 2012). In contrast to the neighbouring Fox glacier, the face of Franz Josef glacier cannot be accessed safely anymore on foot; so hikers are now helicoptered to safe locations, back-and-forth. The Partial Plan review was intended to ‘formalize this’, by extending the quantitative landing limits and sites permanently. The increased noise led to a spike in complaints from visitors walking the valley track (Interviewees A, B). In 2009 the annoyance level was found by independent researchers to be above the “25% management intervention threshold (Roberts Point 33.1% and Chalet Lookout 31.7%).” (West Coast Conservancy, 2012:6).

In the same document, DOC Wetland wrote that “It is important to maintain a wide range of opportunities for visitors to the glaciers. To address aircraft noise impacts on visitors undertaking the longer side valley walks, education and information will be provided advising visitors of the presence of aircraft, rather than decreasing aircraft activity in the glacier valleys. Information on other similar bush walks in the Park will also be made available. The West Coast Tai Poutini Conservation Board notes that the comments from the public on balance do not support increasing the number of helicopter flights onto the glaciers.” (West Coast Conservancy, 2012:6). In November 2013 a public information board with the logo of DOC and the Franz Josef Glacier Guides, photographed by the author, was available on the valley walking track saying that “Glacier visits have had to change....because this landscape is on the move every day as the glacier retreats. Right now helicopters are the only way to get people onto the glacier for guided walks, so you will hear them pass overhead. For a quieter walk into the viewing point, visit the glacier before 8 am or after 6 pm (during the summer period). To book a trip please Freephone....”.

Consequently, *while theoretically the ROS operationalizations and NP Management Plans are crucial when assessing the eligibility of tourism concession applications (1987 Conservation Act, Section 17W), empirical evidence suggests some limits to the guidance that ROS and Plans can offer, due to legal incoherences and a shifting balance of power between DOC and the tourism industry.* This shift has also been seen in other Parks, especially

Fiordland and the surrounding Conservation Estate, where two major infrastructural tourism projects were proposed to the Conservation Minister since 2009: a monorail-based project aiming to link the popular Queenstown to Milford Sound (by boat, monorail and bus); and a road with tunnel through the Parks' backcountry mountains linking the same areas. Both proposals received positive evaluations based on DOC's internal assessment procedures, and were open to public submissions based on 'notification of the intention to grant the concession'. While eventually both were declined (the former recently, in the election year), they attracted huge public interest, seen in the about 2600 public submissions on the two projects (mostly in opposition). If approved, any of these projects would have triggered a change in the Fiordland Park Management Plan, to accommodate the concessions (change possible under Section 17W[3];[4]).

The shift in power, and opening up of the Conservation Estate for business started with the revision of the concession regime in 2009/2010, resulting in the 2010 and 2013 amendments of the 1987 Conservation Act, and other changes to the internal procedures of DOC, which did not necessitate legal revisions. The next section explains these changes and examines the approach towards the concession terms, public notification and allocation methods.

The regime for tourism concessions: general features and recent changes

The 1987 Conservation Act dedicates Part 3 to concessions, distinguishing among (Art. 2.1):

- permits, granting the "right to undertake an activity that does not require an interest in land";
- licenses, offering a "nonexclusive interest in land or a grant that makes provision for any activity on the land that the licensee is permitted to carry out";
- leases, "granting an interest in land that (A) gives exclusive possession of the land and (B) makes provision for any activity on the land that the lessee is permitted to carry out"; easements are also envisaged but less used for tourism.

The Department tends to operationalize these forms by considering also the expected environmental and nature impacts, and the length of the requested concession. These aspects influence whether concession applications will be *publicly notified*. If concessions activities/facilities are likely to be *high impact* and/or be requested for *a longer term*, the public should be notified. In 2009 the Conservation Minister triggered a revision of the concession approval process, invoking the need to offer businesses more certainty regarding their investments in the Conservation Estate and "the need to improve the timeliness and efficiency of decision-making" (DOC, 2010:7). The main changes to the concession regime regard the terms highlighted in italics above.

In the pre-2009/2010 regime, 'longer term' was operationalized in the Act as 5 years, while in the new one this has become 10 years (Revised Sections 17T[4] and[5]. This 10 year term was recommended in a 2006 submission from the Tourism Industry Association New Zealand

to DOC (TIANZ, 2006:20-21) regarding the decision process on concessions “when supply is limited”, arguing that it was important for business certainty. TIANZ also recommended to increase the period between concession fee revisions to 5 years, from the 3 years required under the Conservation Act; but this remained unchanged.

The revised Act requires the Minister to publicly notify, before granting, any “lease or a license with a term (including all renewals) exceeding 10 years”, according to the revised Section 17T(4). However, “Before granting a license with a term (including all renewals) not exceeding 10 years, or a permit (...) the Minister may give public notice of the intention to do so if, having regard to the effects of the license permit or easement, he or she considers it appropriate to give the notice”, according to the new Section 17T(5). While permits may not be longer than 10 years and are not renewable (Section 17Z[2]), leases and licenses “may be granted for a term (which shall include all renewals of the lease or license) not exceeding 30 years or, where the Minister is satisfied that there are exceptional circumstances, for a term not exceeding 60 years” (Section 17Z[1]). These are some of the most important changes proposed in the 2010 internal review report that were accepted as regulatory changes.

The above quotes from the Act show that now the Minister has been given discretion on the notification of the decision to grant a permit or license for less than 10 years, for which the likely impacts are assessed as high. In the recent years, the author’s monitoring of DOC’s website consultation pages led to the observation that recently the notified concession applications are for longer than 10 years (some can still be viewed at <http://www.doc.govt.nz/getting-involved/consultations/all-consultations/notified-concession-applications>).

The new system was implemented in 1 July 2010. As documented above, it seems to have increased not only business certainty but also to have boosted tourism industry’s self-confidence significantly. But it has done so at the price of public participation, allowing citizens and groups less opportunities to have a say in decision-making. Other introduced changes in the internal procedures of DOC allow the Department less time to process applications. If the set timeframes are not respected, DOC pledges to reduce the procession fees. The assessment process can only be interrupted once if more information is needed, through a new “stop the clock” provision, and towards the end if public submissions reveal more information needs to be collected (DOC, 2010:21-30). As the number of applications is expected to increase, while countrywide, there only seems to be 31 full time positions involved in permissions work (Parliamentary Select Financial Committee, 2011:9) one may wonder about the consequences of time pressures for the proper evaluation of all concession effects and eventual mitigation/remedy plans. Another question regards the consequence of less public engagement for the number of approved concessions. Some argue the track record on these aspects was already poor before the 2009/10 changes (PCE, 1997[a] and [b]; Johnson and Lloyd, 2000 and 2002). Detailed historical data on the concession approval rate are not available (though it should be possible to collect them); but we see that in the financial year 2011/12 less than 3% of the concession applications were declined and 67% were approved (out of 651 applications; Youth Parliament, 2013:6).

The thorny issue of concession allocation when supply is limited

An important aspect of concessions that has not been considered in the literature so far empirically is that of *concession allocation when supply is limited*. This is a very sensitive issue, as the business interests at stake are significant. For most combinations of location-activity/facility, the Department relies on the ‘first-come, first-served’ principle; concessions are granted until the limits envisaged in Park Plans have been reached (whenever limits are used). But in some areas, some activities/facilities need to be restricted to one or few suppliers. This has been the case with access to fragile caves or wetlands, investments in private huts in remote backcountry, or the private hut based guided hiking opportunity for the Milford and Routeburn Tracks (top rated in New Zealand’s 10 Great Walks).

In such cases the ecological carrying capacity of the areas is too small to allow for a large number of product suppliers. As the interest in NP tourism has been increasing significantly, the Department negotiated an agreement with concessionaires through the Tourism Industry Association of New Zealand (TIANZ). A draft agreement existed since 2005, but it was only signed in 2008, due to disagreements on the most desirable procedure for decision-making. The disagreement was not about how to make decisions, in the absence of legal guidance. It is about whether the Conservation Minister should exert his/her legal right to use the competitive method of *tendering the concession allocation*, when supply is limited.

There’s been sustained lobby from TIANZ and the affected concessionaires on political decision-makers to persuade the Conservation Minister to refrain from using this perfectly legal option, recommended in international guidelines on sustainable tourism (Laarman and Gregersen, 1996; Eagles et al, 2002:149-150). The 1996 Conservation Act change introduced Sections 17ZG(1) and 17ZG(2) with the following (still applicable) provisions: “(1) Subject to this Act, nothing in this Part shall affect or limit the proper exercise by the Minister or Director-General of any power to manage any land held or managed under this Act or any Act specified in Schedule 1. (2) Without limiting any power exercisable by the Minister, the Minister may—(a) tender the right to make an application, invite applications, or carry out other actions that may encourage specific applications”. The provisions under paragraph 2(a) reflect the preferences of TIANZ and incumbent concessionaires (TIANZ, 2006). However, paragraph (1) is clear that the Act permits the Minister to use other procedures, such as tendering a concession allocation, rather than tendering the right to submit an application.

With the review of the concession process (2010), the Department expressed its interest to develop procedures for the *tendering of concession allocations*, writing that “Use of contemporary allocation tools will be encouraged” and proposed amending Section 17ZG to replace “the right to apply” with “tendering the opportunity” (DOC, 2010:14). TIANZ seems to accept the Minister’s right to use any procedure, when it write that “The Minister has the right to run a tender, which may include an open tender, but there is no compulsion to do so” (ibid, pp.8). But, apparently, DOC felt the need to try to amend the Conservation Act to

slow down the pressure from the tourism industry to rely on Preferential Rights to Apply (PRA) or 'tendering the right to apply'. This attempt has failed so far. There are no legal changes with respect to concessions when supply is limited.

TIANZ argued vigorously for the least competitive procedure, the PRA, and considers that "providing an incumbent with a preferential right to apply for a concession does not create a monopoly. In fact, the definition of a monopoly is complex in legal terms, and even where there is one operator in an area, that does not necessarily constitute a monopoly under competition law" (ibid. pp.8). In its 2006 submission, regarding the draft agreement, TIANZ even warns about litigation risks writing that "The reality of open allocation processes is very difficult in legal terms and the Association believes that there is significant risk of litigation in these circumstances. This could and has tied up significant Departmental funds and resources which would be better used achieving positive conservation outcomes" (ibid. pp3).

The agreement for limited supply concessions was signed in August 2008 (Ministry of Tourism being co-signatory) and envisages the following process.

- For the period 2008-2018, incumbents whose concession expires may be given PRA if they satisfy 3 simple conditions (a current Qualmark certification endorsement for the activity, compliance with contract conditions, and "no convictions or successful infringement actions taken against them under the Conservation and associated Acts" (DOC-TIANZ, 2008:2); (hence not just concession breaches; see next section on monitoring and enforcement problems).
- If successful, the contract length will be 15 or 20 years maximum.
- After this term expires incumbents will be offered a "contestable allocation process (most often in the form of a tender). Incumbents who meet the *qualifying criteria* will be given a favourable 'weighting' in this process (...). If a tender process ends in a dead-heat (all things being equal), the tender will fall automatically in favour of the incumbent." (ibid. pp.3).

Consequently, although a voluntary agreement cannot prevent the Conservation Minister from pursuing a change in the Conservation Act, to explicitly mention the procedure of tendering for concession allocation, such a change has been so far not attempted politically. Concessions for sites/activities with limited supply are important from sustainable development standpoint, especially when we consider the aspect of *equity of access*. One *equity issue is the price barrier for some products offered as monopoly/limited-supply*. DOC has no legal tools to control the price at which concessionaires offer such activities and facilities to the public. For example, key monopoly/exclusive products (like the hiking of the iconic Milford and Routeburn Tracks based on guided trips with accommodation in private huts) incur a price far beyond what the most New Zealanders can afford. Likewise, the price of aircraft-based products is very high given the average income of New Zealanders. The lack of price controls by DOC contributed to the current reality that we see a dominance of international visitors in the concessionaires' client-base (Interviewees A, B, C, D, E, F). To some, the prices charged by concessionaires may appear comparable to similar products on

public lands in other countries, like Australia or South Africa. However, the question (important for these other countries, too) is *whether it is equitable to the taxpayer - footing the bills for 90%-85% of the Department's expenses and Park infrastructures - to have the Conservation Minister approving monopoly/limited-supply concessions to companies that offer products at prices which do not reflect the financial reality of the New Zealand taxpayer.*

The procedure of tendering the concession allocation may not necessarily fix this problem, especially if the 'dead-heat' mentioned in the DOC-TIANZ agreement occurs between two incumbents, which will trigger a decision based on the highest bidder (DOC-TIANZ, 2008:3). However, it may bring new players into the "Park concessions' market", who might have different mind-sets and philosophical attitudes about their business. To illustrate, during an annual conference of tour operators in New Zealand, the chairman of Trojan Holdings, who owns the above two private Great Walk products (and other monopoly/limited-supply products and activities, in Mount Cook NP and other Parks) commented with regards to the price issue: "I make no apology for it. It is a high priced ticket item and sometimes there are five to 10 on one booking..." and "told delegates he was no expert on tourism. 'I consider myself a business person with a very commercial attitude'." (Coventry, 2003:1).

Monitoring and enforcement: not a great track record

Simpson writes, based on personal communication with DOC staff (2003:129) that: "Though the Department has become aware of isolated and seasonal instances of intense visitor pressure at a small number of specific sites, and continuous monitoring is accepted as vital, only the most minor of restrictions on visitor behaviour have to date been contemplated (A. Bignell, personal communication). In the DOC view, the sanctity of Crown's land is relatively secure both now and in the foreseeable future." However, not the same positive picture emerges from the author's investigations in three NPs, or from a presentation from a DOC staff reflecting on concessions and monitoring.

The Department distinguishes among 3 types of monitoring: "baseline monitoring (numbers, activity, location, time); compliance monitoring; and effects monitoring" (DOC, 2008). In a conference on New Zealand Ecotourism, DOC staff provided the following reflections in the presentation slides: "Monitoring is ad-hoc, driven by individual issues and perspectives"; it is "focussed on collecting information without a clear understanding of the issue or how the information would eventually be used, what are the key strategic drivers, what do we need to know to be able to make informed management interventions in the future to protect conservation values and the quality of a visitor's experience?" (DOC, 2008).

In terms of monitoring concession contracts, DOC's Annual Reports indicate low rates, every year. E.g. in the 2013 Annual Report it is mentioned (2013a:36) that the target was to monitor "15 percent of active longer term recreation concessions", and that the outcome

was that “309 active longer-term recreation concessions were monitored out of 1,375 longer-term concessions managed (22 percent)”. There are no explanations offered as to the low target/outcome, or what is the general monitoring strategy. There is no information on how does monitoring reflect the various levels of ecological sensitivity of areas where concessionaires operate, or the number of complains about concessionaires’ operations.

It should not be a cost problem, because the Conservation Act allows DOC to recover all monitoring related costs. Besides, we find provisions on concessionaires’ financial responsibilities for monitoring also in the standard concession contracts available at DOC’s website. E.g. the Concession Contract for Lease and License mentions that: “10.(1). The Concessionaire must, during the Term, if the Grantor so directs, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity. 10(2). If the Grantor does not issue a direction under clause 10.(1), the Concessionaire must, during the Term, pay to the Grantor the annual Environmental Monitoring Contribution specified in Item 7 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.” (DOC, no date:13). Even if the problem was staff availability, DOC could always subcontract accredited private consultants with concessionaires’ funding to implement the monitoring obligations.

DOC’s research participants in this study indicated that for some activities, especially in remote areas, monitoring is difficult. For example in the case of helicopters/airplane activities, DOC has to rely on the public, clients or other concessionaires to report incidents (Interviewees G,H, I, J). Incidents with helicopters often are in the form of landing at sites not included in the concessionaire’s contract, flying too low, or landing in ways that impact on recreationists and other groups (i.e. less than 500 m away from them or another aircraft; New Zealand Herald, 2012).

As illustration, on 28 October 2013, two helicopters attempted to land close to each other at a site that according to DOC staff was “not approved” (Interviewees G,H), leading to an accident in which one pilot was injured: “Investigators are flying to the crash site in Mt Aspiring National Park today after a scenic flight helicopter clipped a second stationary chopper and crash landed on a glacier. The Helicopter Line Squirrel apparently clipped a second stationary craft on the Tyndall glacier near the head of the Shotover River and rolled during a snow landing on Monday about 3pm. Eleven tourists and two pilots were airlifted from the glacier.” (The Southland Times, 2013). One pilot was injured. Both helicopters involved in the crash were from the same company, who was involved in the past in complaints of inappropriate flying (see New Zealand Herald 2012).

Here comes the issue of enforcement, with implications for concession renewal. As mentioned in the above section, compliance breaches cannot constitute reasons for concession termination or renewal rejection. They cannot even be invoked in applications

for monopoly/limited-supply concessions under the Preferential Right to Apply. DOC staff argues that it is very hard to prove in Court the breach of concession contracts, especially for aircraft incidents in remote areas (Interviewees G,H). While helicopters must be equipped with location/route tracking devices, such as GPS system, pilots may argue there was an emergency (technical, weather, or human health related). In Mount Aspiring there has been so far one case of continuously poor track-record of compliance with the concession contract by one helicopter concessionaire. After years of prosecution attempts, the regional Department office was expecting, based on the available evidence, that the right of the owner to do business in the NP will be terminated (Interviewees G,H). However, this has not been legally possible so far (see below).

Another issue is that joint ventures and concessionaire ownership changes can make it very difficult for DOC, legally, to decline applications from companies whose staff was involved in contract breaches, whether successfully prosecuted or not. E.g. in 2013, DOC notified for public submissions the aggregated application of a large number of companies constituting basically the bulk of the country's heli-skiing industry (DOC, 2013b). Their long-term limited supply concessions were running out by May 2014 and a new concession was applied for, for 20 years. The DOC officer reported that "As part of the current heli-skiing allocation process under the Limited Supply Allocation process a requirement was made to require the incumbent concessionaires to apply *as single entities*. As a result *some new joint venture companies have been formed to make applications under this process*. These new joint venture companies are made up of existing concessionaire and therefore have a working relationship with the Department." (DOC, 2013b:5; emphasis by author).

To continue the analysis based on the earlier example, it is unclear whether the Helicopter Line was ever found guilty of non-compliance with the contract in Court, in relation to any incident; most likely not, given DOC's experience with prosecution success rates. However, it is interesting to see that it is owned by a company (Totally Tourism) that created a new joint venture which was "trading as Harris Mountain Heliski" in the concession application for 20 years, presented as 'aggregated' to the public and Conservation Minister, next to the of many other aircraft companies (DOC, 2013b:5). Besides, the other helicopter company that regional DOC staff was trying to prosecute for year, was listed separately in the same aggregated application, which was approved.

While many concessionaires appear to be performing in exemplary manner, and indeed New Zealand concessionaires have received national and international awards on service quality and accolades for consumer satisfaction, compliance issues in National Parks are too important to disregard them as 'isolated incidents'. The above analyses suggest weaknesses in the legal framework that do not incentivize, or empower, DOC to screen among applicants based on their real (rather than judicial) track-record and business attitudes.

Besides, compliance issues are in no way restricted to aircraft activity. Negative impacts have been documented in many of New Zealand's abundant studies on visitor and tourism

business impacts (see PCE, 2007[a];[b] for a good overview). E.g. Johnson, a former DOC staff, wrote in 2000 about sewerage pollution along the Routeburn Track, in relation to private facilities (held in a monopoly/exclusive concession, as mentioned above). He explained that “In December 1999 the DOC Otago Conservancy renewed a concession for Routeburn Walks Ltd that includes permission to build an additional lunch shelter at Harris Saddle on the Routeburn Track (3). The private lunch shelter development will be an additional intrusive structure on the highest and most scenic point on the Routeburn Track linking Mount Aspiring and Fiordland National Parks. The shelter will piggy-back on DOC's Harris Saddle septic tank system. This has discharged unsettled effluent into the watershed of the Hollyford for at least 6 years in breach of its resource consent. I know this as I used to turn the valve that released the effluent.” (pp1). Johnson argues that the very design of that project was faulty, and would have failed the Assessments of Environmental Effects procedures of the Ministry for the Environment.

The author of this paper has also come across a sewerage pollution event, this time coming from the Hermitage Hotel in Mount Cook National Park, owned by the same company Trojan Holding. The environmental performance of this company is important as it holds numerous limited-supply concessions in National Parks and areas that are ‘icon destinations’ for New Zealand. During my fieldwork in the Mount Cook village for interviews and observations, I stepped by mistake, during dense rain, into white smelly sewerage on an alley in the middle of the village; the sewerage was leaking from a canal mouth at the edge of the carpark of the Hermitage Hotel.

Discussions with the local DOC office confirmed that it was sewerage from the restaurant kitchen of the hotel. The sewerage stream was flowing through a vegetated area downhill coming out on the main walking alley of the village, connecting the Hotel to the DOC Visitor Center. The alley is used by hundreds of visitors daily, coming to see “Clean-Green New Zealand”, who instead had to endure the offending odour and visual effect of the stream full of white fat. The stream left thick fat deposits along the affected vegetated area, indicating the leakage was not quite recent. No temporary structures separated the sewerage stream from the rest of the alley used by the public.

The reaction of the 3 different Duty Managers inquired about the leakage over one week was changing from day to day, from “we will deal with this” (day 1), to “we did not know” and “it’s not coming from us”. The only comment that made a difference was that as a client of the restaurant, with receipts, I am entitled to share my experiences and pictures on Trip Advisor. Following that the Duty Manager was resolute: “the problem will be solved and nobody needs to know”. The pictures and video footage were later sent to DOC Head Office as part of a formal complaint. The feedback received was that the local DOC office “established that it was something that the concessionaire had to resolve. They have done so. The manager will let me know what, if any, further actions are considered after further investigation.” (Personal communication, 3 December 2013).

In conclusion, the issues of monitoring and enforcement remain matters of concern, which perhaps cannot be solved under the current legal and institutional arrangements. Two interviewees suggested that this performance record can only be improved if the operations of monitoring and enforcement are separated, throughout the country, from responsibilities on concession permitting. This separation can take the form of special DOC structures or even an independent body (Interviewees K,L). As DOC is expected to increase the financial contributions of concessions and private donations to its expenditure budgets, this may create conflicts of interest with respect to adequate monitoring which - on the background of cracks in the legal framework affecting enforcement – may not lead to the conservation and environmental outcomes dreamed of by decision-makers.

Unfulfilled hopes

The Conservation Economy was presented by the post-2009 neoliberal governments to New Zealanders as an opportunity to increase national welfare based on natural resources. The special Program 'Building Natural Resources' requested a de-regulation of the regime for concessions in National Parks arguing that this will bring more conservation benefit through business involvement in environmental protection, biodiversity conservation, and even the maintenance of tracks and other facilities (Treasury, 2013: 12-13, New Zealand Government 2012). Such developments would have been desirable and admirable, on the background of a historically very unambitious approach by DOC in designing and managing concession contracts with such objectives in mind.

The examination of six ongoing concession contracts (for accommodation, guided walks, kayaking and aircraft; obtained from DOC staff under informed consent), 12 applications for concessions notified by DOC at its website over the past 3 years, the analysis of the available literature and interviews with 8 DOC staff (in the 3 National Parks and at the Head Office) and with various stakeholders – all point towards a number of key observations regarding the environmental and biodiversity management aspects of tourism concessions.

DOC's requirements in contracts are typically formulated in terms of "don'ts rather than do's": the concessionaire should not break any applicable law, strategy, management plan; should not light fires, "not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land" (DOC, no date:12); not dispose of toilet wastes near water, etc. The requirements of do's are the normal ones, to be expected in any commercial contract: do deal with rodents and pest insects, "keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition"; and "make adequate provision for suitable sanitary facilities for the Land if directed by the Grantor and for the disposal of all refuse material" (ibid. pp12). A suitable requirement in the standard concessions uploaded at DOC's website was found in the Guiding Permit only, requiring businesses and their clients to adhere to the international "Leave No Trace" principles at all times (www.leavenotrace.org.nz). We can also find requirements to provide environmental

and cultural interpretation to clients included in Permits, Licenses and Leases.

How is the neoliberal government of New Zealand going to achieve “greening growth” or “sustained growth from natural resources” (New Zealand Government, 2012:5;7) with such provisions, on the background of the significant legislative and planning shortcomings touched upon in this paper? How is the Conservation Minister going to achieve “conservation gain” with more tourism concessions (New Zealand Government, 2012:23; Treasury, 2013:3)? Section 17 ZG(2) of the 1987 Conservation Act gives him/her good tools: the Minister may “include in any concession provisions for the concessionaire to carry on activities relating to the management of any conservation area on behalf of the Minister or at any time enter into any agreement providing for the concessionaire to carry out such activities.”.

However, there is not much evidence that this happens. There is not much evidence of meaningful environmental requirements included in concessions, of the type recommended in international guidelines, such as concrete measures to be taken regularly to achieve specific biodiversity conservation outcomes; or the use of renewable energy and fuels (at least for some minimum levels in their business); or requirements on the use of the most environmentally-friendly methods of wastes’ management, wastewater treatment and transportation (Eagles et al, 2009:48-60). Interviews with concessionaires indicated many were unaware of environmental practices they could implement, some offering even a financial gain, such as recycling kitchen oil to produce biofuel based on an installation that would fit in a double garage. Interest in environmental measures was not low, but many interviewed concessionaires argued they are unlikely to implement them unless required in the concession, because their priority was making a living, and the market in National Parks is already too competitive to afford voluntary measures (Interviewees M,N).

The culture so far in New Zealand has been that - if concessionaires avoid, rectify and mitigate environmental effects, then all should be fine. Some argue that not even this has been done properly, so far (PCE, 2007[a];[b]; Johnson and Lloyd, 2000 and 2002). However, as the Youth Parliament argued: “Businesses could do more than just rectify damage caused by their own commercial activities. As well as protecting the conservation estate, they could enhance it (....). In terms of behavioural change, it is more desirable to have businesses commit to carrying out conservation action themselves, rather than just giving funding to DOC to do it on their behalf, as this is likely to result in a more meaningful commitment to environmental values by the business, its staff, and its customers” (2013:5). The current situation in New Zealand makes one ask: if a government cannot afford to ask companies carrying out business in National Parks - a country’s most precious lands - to use the best available environmental practices, technologies and renewable resources, and to be proactive on biodiversity management, then who can that government ask to do so?

The government seems to be expecting environmental initiatives and biodiversity gains to come in the form of donations and voluntary measures by concessionaires. All interviewed

DOC staff in regional offices argued that many concessionaires volunteer for projects on the protection of endemic/threatened species, or engage regularly in pest control and removal, or the plantation of native plants. However, this reflects DOC's narrow focus on biodiversity, which was criticised as being fixated on pest trapping and species, while ignoring more holistic aspects like actions that would help enhance ecosystems' resilience and quality more generally (Youth Parliament: 2013).

For the purpose of enhancing public support for concessionaires' expansions in NP, it would be helpful for DOC and concessionaires to *provide more evidence of the projects undertaken voluntarily and through contract provisions - whether nature/environmentally-oriented or infrastructural projects*. In the internet and social media age, there are plenty of opportunities to do this swiftly, while reaching millions of people. Similarly, it is highly desirable that *tourism concessionaires develop and apply proper public relations strategies, to improve both the frequency and quality of communication with members of the public, organized groups and other stakeholders*.

In conclusion, the analysis in this paper showed that the governance approach for tourism and recreation in New Zealand's National Parks is in transition, as a result of a recent 'neoliberal return'. Significant demand-oriented regulatory and policy changes to accommodate more international visitors have been implemented in what remains a fundamentally supply-oriented legal-institutional framework, designed decades ago to serve the independent recreation interests of New Zealanders. This 'historic framework' already had its own limitations and in-coherences, which have always posed risks to the long-term sustainability of tourism and recreation in nature areas. Such 'risks' have already materialized in 'hot spots' of overcrowding, pollution and biodiversity value decrease.

It seems that if – in the context of the new concession regime – DOC cannot manage the effects of the growth in the nature-based tourism industry, a change in the planning framework underpinning conservation management plans is inevitable, as a first step towards a modernized and more effective governance structure for sustainable nature-based tourism. The current incoherent mixture of supply and demand frameworks and tools can only weaken DOC's ability to manage NP properly. It makes little sense to persist in using the ROS system, if this means that market pressures will lead to the watering-down of NP Management Plans when they are up for renewal (or even before that, as experiences with the proposal for a Partial Plan Change in Westland have showed). Table 1 suggests that 5 other frameworks are available for visitor planning and shows ROS as having the worst performance across the 6 criteria. The literature documents trials with the Limits of Acceptable Change Framework in New Zealand's nature areas (McKay, 2006). The Department has also started working with the Destination Management Framework in 2011 (DOC 2011c), which is a demand-oriented framework.

The current tensions between the old supply-based and the recent demand-oriented approaches to management need to be resolved soon, with wide genuine public

engagement in the decision processes. It is perhaps wiser to swing the governance transition towards a 21st century approach that is more accommodating of genuine partnerships with businesses, visitors and communities, while introducing market pricing policies, including Entry Fees in National Parks, to ensure the financial viability of DOC's operations. Otherwise, the neoliberal return, with the promise of a Conservation Economy, will only deliver unsustainable tourism development on New Zealand's most valued lands, some of which are part of the UNESCO Natural World Heritage.

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List of interviews in the period 15-30 November 2013

Interviewee A, tourism concessionaire West Coast

Interviewee B, self-employed hiking guide, Franz Josef

Interviewee C, concessionaire operating on the glaciers of Westland

Interviewee D, concessionaire operating on the glaciers of Westland.

Interviewee E, concessionaire with hiking guidance operations in Mount Aspiring NP

Interviewee F, concessionaire with hiking and boating guidance operations in Mount Aspiring Park

Interviewee G, DOC staff appointed for interview on Mount Aspiring Park

Interviewee H, DOC staff appointed for interview on Mount Aspiring Park

Interviewee I, DOC staff appointed for interview on Mount Cook Park

Interviewee J, DOC staff appointed for interview on Westland Park

Interviewee K, senior member of Federated Mountain Club representing recreationists

Interviewee L, member of the Conservation Board for the Fiordland Park, representing public interests

Interviewee M, large company with concessions covering one of the Westland glaciers

Interviewee N, large company with concessions in Mount Aspiring Park

Interviewee O, member of the Mount Aspiring Board, representing public interests