

**Regulatory Impact Statement**

**Biosecurity Act  
Amendment Bill**

Paper 6: Long-term  
management

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# 1. Introduction

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1. The Biosecurity Act Amendment Bill (the Bill) impact statement has been split into a series of impact statements as follows:
  - Paper 1: Overview impact statement;
  - Paper 2: System-wide issues;
  - Paper 3: Funding and compensation;
  - Paper 4: Border and imports;
  - Paper 5: Readiness and response;
  - Paper 6: Long-term management; and
  - Paper 7: Surveillance and interfaces with Department of Conservation-administered legislation.
2. The overview impact statement sets up the background for the Bill, the overarching regulatory stewardship “problem definition”, and the objective and criteria for the Bill as a whole. The remaining impact statements detail specific issues and proposals, which relate to the overarching opportunity and objectives. The topic-based impact statements should be read together with the overview impact statement.
3. This impact statement is Paper 6: Long-term management. It contains issues to do with:
  - pest and pathway management and small-scale management programmes;
  - the alignment of long-term management outcomes; and
  - the management of unwanted organisms and notifiable organisms.
4. Each topic is structured in the same way:
  - background to the topic;
  - problem / opportunity;
  - options;
  - assessment of the options;
  - cost benefit analysis; and
  - preferred option.

## **Note on cost benefit analysis for Paper 6**

5. It is difficult to isolate the potential impacts of individual proposals because of the high level of interaction between them. The benefits of the proposed amendments accrue primarily from considering the proposed amendments as a package. The synergies between proposals also mean that many of the benefits will be best achieved by enabling multiple amendments. There are 19 proposals in total for Pest Management package.
6. Overall, one or more of these proposals together will result in downstream efficiencies. This impact, dynamic efficiency, is key to consideration of the “Pest Management” suite of proposed amendments.

## 2. Background on long-term management

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7. Once established, harmful organisms (such as pests and diseases) can cause significant damage to New Zealand's environment, economy, and human health. Examples of pests and diseases include:
  - mammalian pests (e.g. possums, rats, ferrets, stoats and weasels);
  - weeds and other introduced plant species (e.g. gorse and wilding conifers);
  - aquatic pests (e.g. freshwater gold calm, clubbed tunicate and bonamia ostreae); and
  - diseases affecting plants and animals (e.g. kauri dieback and *Mycoplasma bovis*).
8. When MPI finds a pest or disease, we investigate it, assess the risk and then decide how best to respond. That usually involves forming a response team to manage and monitor activities. As MPI moves away from a response where a pest or disease becomes established, we move to long-term management.
9. The Biosecurity Act 1993 (the Act) provides the legislative framework for undertaking long-term management for pests and diseases within New Zealand. Long-term management is coordinated and empowered in Part 5 of the Act through:
  - national and regional pest or pathway management plans;
  - small-scale management programmes (for regional councils only);
  - the National Policy Direction for Pest Management (the NPD);
  - regulations that set out the process for the Minister for Biosecurity to assign responsibility for a decision on a harmful organism or pathway; and
  - assigning organisms as unwanted organisms or notifiable organisms.

## 3. Pest and pathway management and small-scale management programmes

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### 3.1. Background

#### Pest and pathway management

10. A pest is any plant, animal, fungus or disease that may cause harm to human, animal or plant health or the environment. When we refer to pests in this document, we use the definition above, not the legal definition under the Act ("pest means an organism specified as a pest in a regional or national pest management or pathway management plan"). Examples of pests are possums, fruit flies, and weeds like velvet leaf.
11. A pathway is places and activities that pests use to move from one area to another. It refers to the movement of goods or craft (e.g. boats) through a particular place in New Zealand (e.g. the Waikato river), or a particular kind of place (e.g. rivers in the Waikato region).

12. The Act allows biosecurity activities to be undertaken by delegating regulatory powers to entities outside of central government. This includes regional councils or management agencies including those operated by industry organisations. These entities access regulatory powers they through one of the following four types of management plans under Part 5 of the Act:
  - a National Pest Management Plan;
  - a National Pathway Management Plan;
  - a Regional Pest Management Plan; and
  - a Regional Pathway Management Plan.
13. Throughout this document we will refer generically to national management plans (whether pest or pathway) as NPMP, and refer generically to regional management plans (whether pest or pathway) as RPMPs.
14. These plans give access to comprehensive powers including the ability for councils or management agencies to, for example, require landowners to control a pest, inspect any place, give directions, declare a restricted place or controlled area.
15. The Act prescribes an extensive process for developing pest or pathway management plans. There is some variation depending on if a NPMP or a RPMP is pursued, but on the whole the steps are similar:
  - Step One: the process must be initiated by a proposal to or by a Minister or a regional council. The proposal must include detail on all 35 requirements set out in section 70(2) of the Act (for a regional pest management plan);
  - Step Two: If the Minister or council is satisfied the proposal meets Step One, they may consider whether the proposal meets all the requirements in section 71. There are 28 considerations (for a regional pest management plan);
  - Step Three: If the Minister or council is satisfied of the matters in Step Two, they may consider whether proposal meets all the requirements in section 72 (for a regional pest management plan), which is about extensive consultation;
  - Step Four: If the Minister or council is satisfied of the consultation that has taken place, they may then approve the preparation of the plan. This is an important step as the plan must contain all the information that must be specified under section 73 (for a regional pest management plan), including the type of rules that are permitted in a plan;
  - Step Five: If the Minister or council is satisfied that Step Four has been complied with, they then consider the contents of the plan and ensure the requirements in section 74 have been met; and
  - Step Six: If the Minister or council is satisfied of the matters in Step Five, they make the plan. For a national plan, the Minister would seek Cabinet approval. For a regional plan, the council must prepare a report to provide information on the previous Steps and give public notice of the plan.
16. Currently under the Act there are:
  - three national pest management plans (bovine tuberculosis, American foulbrood and Kauri dieback disease);

- one national pathway management plan (the National Kiwifruit Pathway Management Plan);
  - 15 regional pest management plans; and
  - two regional pathway management plans.
17. National pest management agencies (management agencies) include Kiwifruit Vine Health, Tbfree NZ Ltd, the Management Agency for American Foulbrood and Tiakina Kauri (Kauri Protection). These management agencies are responsible for delivering specific national pest or pathway management plans. Te Tiriti o Waitangi/Treaty of Waitangi partners, landowners and community groups also manage pests on their land or in their community.

### Small-scale management programmes

18. Under section 13, regional councils can implement small-scale management programmes to eradicate or control an unwanted organism. Small-scale management programmes are the primary response tools available to regional councils for managing incursions of unwanted organisms that are not declared pests in a regional pest management plan for the region (and are not managed wholly by MPI).
19. Sections 100V and 100W of the Act outline the process to be followed to declare a small-scale management programme. This process includes pre-requisites to meet around the subject organism causing serious and unintended effects, and the exercise of powers that are proposed to be used under a small-scale management programme.

## 3.2. Problem or opportunity

20. MPI has engaged with participants in the long-term management system who undertake the majority of pest management activities in New Zealand, including representatives from regional councils and the Department of Conservation, to determine if there are any fundamental or systemic issues with the pest management system.
21. The feedback received from participants was that while there are no fundamental issues with long-term management under the Act, there are several areas that could be improved to enable pest management to be more effective:
- **Tools for long-term management need to be easier to access:** While the Act provides a range of tools for long-term management, they are unnecessarily time consuming and difficult to access. A key example is the process for developing and getting NPMPs and RPMPs in place.
  - **There is a need for greater flexibility in the Act for long-term management:** The Act could be improved by enabling – but not requiring – different approaches where the situation warrants it. For example, the Act requires that a separate plan is developed to manage pathways that could potentially spread a pest. The Act does not enable a combined pest and pathway plan to be developed. Similarly, the Act requires separate levies for national pest and pathway management plans, where a single levy could be used to fund a combined pest and pathway management plan.

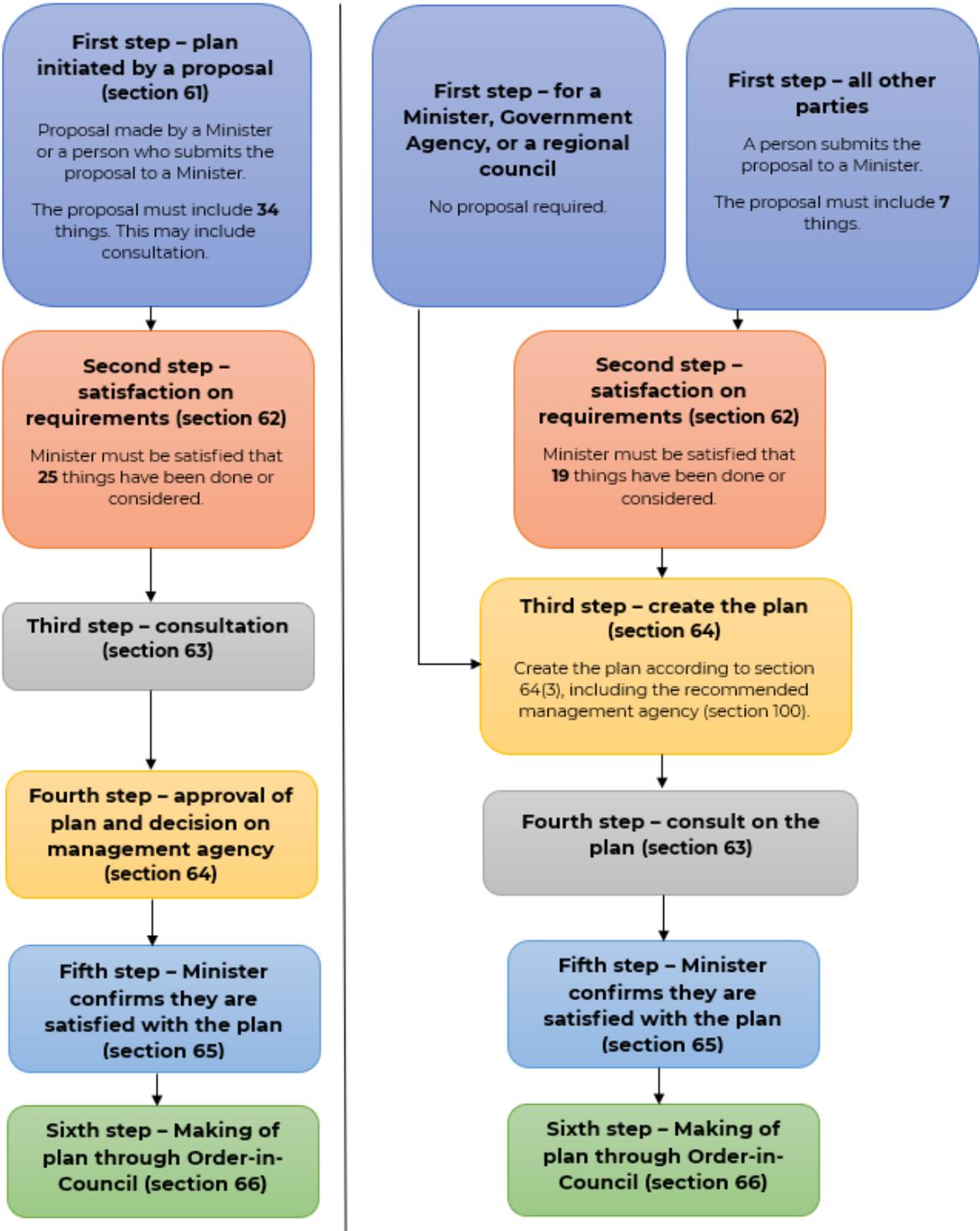
- **The need for new powers, or to enhance local government or management agency powers, for long-term management:** There may be a case for additional powers within the Act. An example is providing regional councils and management agencies the function of issuing permits for pests in plans they manage and providing regional councils tools to address emerging risks.

### 3.3. Options

22. **Option 1** is the **status quo**. Under this option, the six-step process for NPMPs and RPMPs would continue to apply, and regional councils will continue to be limited in their use of small-scale management programmes.
23. The remaining options are not mutually exclusive and could be implemented together.
24. **Option 2** seeks to **simplify the process to create national or regional pest and pathway management plans**. This would be achieved by:
  - removing any unnecessary duplication and certain procedural steps that are contained in sections 61 – 67 and 81 – 86 (for NPMPs) and sections 70 – 75 and 90 – 95 (for RPMPs) of the Act (see Figure 1 and Table 1 below for further detail);
  - clarifying in the Act that the steps to develop NPMPs and RPMPs are not necessarily sequential and can be undertaken concurrently;
  - simplifying the process for initiating proposals for NPMPs and RPMPs through amending sections 61(1), 70, 81 and 90 of the Act, so that a proposal for a plan will not be required if the proposer of a NPMP or RPMP is a Minister, central government agency or regional council;
  - for any other person or parties proposing a NPMP or RPMP, a proposal for a plan would only need to include the following:
    - the name of the person making the proposal;
    - the subject of the proposal;
    - for each subject, a description of its adverse effects or the potential risks associated with it, the reasons for proposing a plan and the objectives the plan would have;
    - for a national plan proposal, the reasons why a national plan would be more appropriate than a regional plan; and
    - for a regional plan proposal, the reasons why the plan is more appropriate than relying on voluntary actions.
25. To ensure that NPMPs and RPMPs are robust, all safeguards included in the Act would be retained for developing plans, including consultation requirements (sections 63, 72, 83 and 92 of the Act), requirements to finance plans, requirements for what plans may, and must, contain and ensuring that NPMPs and RPMPs are consistent with the National Policy Direction for Pest Management (see Section 3 of this paper for more detail on what the National Policy Direction is).

**Figure 1 - comparing the status quo and Option 2**

Note: The below figure shows how the process to develop national pest management plan would change if proposal 46 is progressed. There are differences between national and regional pest and pathway management plans. This figure indicates our intention for how we would streamline these plans. We will seek to carry over this streamlining to national pathway management plans, regional pest management plans and regional pathway management plans.



**Table 1 – comparing requirements under the status quo and Option 2**

Status quo	Option 2 amendments
<p><b>Step 1 - plan initiated by proposal by individual, government or council</b></p> <p>Section 61 requirements for a proposal:<sup>1</sup></p> <ul style="list-style-type: none"> <li>• (2)(a) – name of proposer</li> <li>• (2)(b)(i) – organism(s) proposed to be a pest in the plan</li> <li>• (2)(b)(ii) – description or class of organism(s) to be a pest in the plan</li> <li>• (2)(c)(i) – adverse effects of organism</li> <li>• (2)(c)(ii) – reasons for proposing the plan</li> <li>• (2)(c)(iii) – objectives the plan would have</li> <li>• (2)(c)(iv) – principal measures in the plan to achieve the objectives</li> <li>• (2)(c)(v) – other measures reasonable to take to achieve the objective and explanation of why</li> <li>• (2)(c)(vi) – why a national plan is more appropriate than a regional plan</li> <li>• (2)(c)(vii) – costs and benefits analysis</li> <li>• (2)(c)(viii) – which persons or class of persons would benefit from a plan</li> <li>• (2)(c)(ix) – which persons or class of persons contribute to creation, continuance or exacerbation of problems the plan solves</li> <li>• (2)(c)(x) – rationale for allocation of costs</li> <li>• (2)(c)(xi) – if the plan will be funded by a levy under the Act and how the levy meets necessary requirements</li> <li>• (2)(c)(xii) – any unusual administrative problems or costs are expected in cost recovery</li> <li>• (2)(d) – any other organisms needed to be controlled</li> <li>• (2)(e)(i) – effects the plan would have on economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga</li> <li>• (2)(e)(ii) – effects the plan would have on the marketing overseas of New Zealand products</li> <li>• (2)(f) - if the plan affects another plan, how to coordinate the implementation of the plans</li> <li>• (2)(g) – Part 6 powers to be used to implement the plan</li> <li>• (2)(h) – each rule in the plan and the purpose of the rule</li> </ul>	<p><b>Step 1 – plan initiated by proposal by individual</b></p> <p>Proposed requirements for proposal:</p> <ul style="list-style-type: none"> <li>• (2)(a) – name of proposer</li> <li>• (2)(b)(i) – organism(s) proposed to be a pest in the plan</li> <li>• (2)(b)(ii) – description or class of organism(s) to be a pest in the plan</li> <li>• (2)(c)(i) – adverse effects of organism</li> <li>• (2)(c)(ii) – reasons for proposing the plan</li> <li>• (2)(c)(iii) – objectives the plan would have</li> <li>• (2)(c)(vi) – why a national plan is more appropriate than a regional plan</li> </ul>

<sup>1</sup> The listed requirements are a paraphrase of each provision in section 61. Is not intended to provide a rough indication of what the provision requires, and is not intended to be relied on for complete legal accuracy.

Status quo	Option 2 amendments
<ul style="list-style-type: none"> <li>• (2)(i) – which rules would be an offence if breached</li> <li>• (2)(j) – the management agency for the plan</li> <li>• (2)(k) – monitoring or measurement of achievement of the plan’s objectives</li> <li>• (2)(l) – actions that local authorities may take to implement the plan, including contributing towards the cost of the plan</li> <li>• (2)(m) – what compensation is available, if any</li> <li>• (2)(n) - information on the disposal of the proceeds of any receipts arising in the course of implementing the plan</li> <li>• (2)(o) - whether or not the plan would apply to the EEZ and whether just parts of it or all of it</li> <li>• (2)(p) - whether the plan includes portions of road adjoining land it covers, as authorised by section 6, and, if so, the portions of road proposed to be included</li> <li>• (2)(q) - the anticipated costs of implementing the plan</li> <li>• (2)(r) – how the costs are funded</li> <li>• (2)(s) – period the plan would be in force</li> <li>• (2)(t) – consultation that has occurred on the proposal</li> <li>• (2)(u) – matters in the national policy direction required to be in the plan</li> <li>• (2)(v) - steps taken to comply with the process requirements in the national policy direction, if there were any</li> </ul>	
<p><b>Step 2 – satisfaction on key considerations</b></p> <p>Section 62 requirements:<sup>2</sup></p> <ul style="list-style-type: none"> <li>• (a) – the proposal is not inconsistent with the national policy direction</li> <li>• (b) – process requirements in the national policy direction were complied with during the development of the proposal</li> <li>• (c)(i) - proposal has merit as a means of eradicating or effectively managing the organism(s) proposed to be a pest</li> <li>• (c)(ii) - proposal has merit as a means of eradicating or effectively managing the description or class of organism(s) to be a pest</li> <li>• (d)(i) – organism is capable of causing adverse effect on economic wellbeing</li> <li>• (d)(ii) – organism is capable of causing adverse effect on the viability of threatened species of organisms</li> </ul>	<p><b>Step 2 - satisfaction on key considerations</b></p> <p>Proposed requirements for proposal:</p> <ul style="list-style-type: none"> <li>• (a) – the proposal is not inconsistent with the national policy direction</li> <li>• (b) – process requirements in the national policy direction were complied with during the development of the proposal</li> <li>• (c)(i) – proposal has merit as a means of eradicating or effectively managing the organism(s) proposed to be a pest</li> <li>• (c)(ii) – proposal has merit as a means of eradicating or effectively managing the description or class of organism(s) to be a pest</li> <li>• (d)(i) – organism is capable of causing adverse effect on economic wellbeing</li> <li>• (d)(ii) – organism is capable of causing adverse effect on the viability of threatened species of organisms</li> </ul>

<sup>2</sup> The listed requirements are a paraphrase of each provision in section 62. Is not intended to provide a rough indication of what the provision requires, and is not intended to be relied on for complete legal accuracy.

Status quo	Option 2 amendments
<ul style="list-style-type: none"> <li>• (d)(iii) – organism is capable of causing adverse effect on the survival and distribution of indigenous plants or animals</li> <li>• (d)(iv) – organism is capable of causing adverse effect on the sustainability of natural and develop ecosystems, ecological processes, and biological diversity</li> <li>• (d)(v) – organism is capable of causing adverse effect on soil resources</li> <li>• (d)(vi) – organism is capable of causing adverse effect on water quality</li> <li>• (d)(vii) – organism is capable of causing adverse effect on human health</li> <li>• (d)(viii) – organism is capable of causing adverse effect on social and cultural wellbeing</li> <li>• (d)(ix) – organism is capable of causing adverse effect on enjoyment of the recreational value of the natural environment</li> <li>• (d)(x) – organism is capable of causing adverse effect on the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu and taonga</li> <li>• (d)(xi) – organism is capable of causing adverse effect on animal welfare</li> <li>• (e) – that for each organism, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action</li> <li>• (f)(i) – that for each organism, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan would accrue, as a group, benefits outweighing the costs</li> <li>• (f)(ii) - that for each organism, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan</li> <li>• (g) – that for each organism there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years</li> <li>• (h) - implementation of the plan would not be contrary to New Zealand’s international obligations</li> <li>• (i)(i) – each proposed rule would assist in achieving the plan’s objectives</li> <li>• (i)(ii) – each proposed rule would not trespass unduly on the rights of individuals</li> <li>• (j) – the proposal is not frivolous or vexatious</li> <li>• (k) – proposal is clear enough to be readily understood</li> <li>• (l) – if the Minister rejected a similar proposal within the last 3 years, new and material information answers the objections to the previous proposal</li> </ul>	<ul style="list-style-type: none"> <li>• (d)(iii) – organism is capable of causing adverse effect on the survival and distribution of indigenous plants or animals</li> <li>• (d)(iv) – organism is capable of causing adverse effect on the sustainability of natural and develop ecosystems, ecological processes, and biological diversity</li> <li>• (d)(v) – organism is capable of causing adverse effect on soil resources</li> <li>• (d)(vi) – organism is capable of causing adverse effect on water quality</li> <li>• (d)(vii) – organism is capable of causing adverse effect on human health</li> <li>• (d)(viii) – organism is capable of causing adverse effect on social and cultural wellbeing</li> <li>• (d)(ix) – organism is capable of causing adverse effect on enjoyment of the recreational value of the natural environment</li> <li>• (d)(x) – organism is capable of causing adverse effect on the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu and taonga</li> <li>• (d)(xi) – organism is capable of causing adverse effect on animal welfare</li> <li>• (h) – implementation of the plan would not be contrary to New Zealand’s international obligations</li> <li>• (j) – the proposal is not frivolous or vexatious</li> <li>• (k) – proposal is clear enough to be readily understood</li> <li>• (l) – if the Minister rejected a similar proposal within the last 3 years, new and material information answers the objections to the previous proposal</li> </ul>

26. **Option 3** seeks to **enable (but not require) integrated pest and pathway management plans**, which would provide the option of having a single plan covering specific pests and pathways. This option would include a provision in the Act that would clarify that the pest and pathway rules in an integrated plan would have the same relationships with law as those in separate pest and pathway plans. The relevant rules in both integrated and separate plans must be consistent with sections 60, 69, 80, 89, including:
- section 69(5) - the Crown is only bound to costs and obligations for good neighbour rules in regional pest management plans; and
  - section 89(5) - the Crown is bound to all relevant costs and obligations for rules relating to regional pathway management plans.
27. **Option 4** would **enable (but not require) the ability to have consolidated levies for NPMPs**. This would enable an industry organisation to collect only a single levy from their sector to fund any management agency activities and its obligations under the Government/Industry Agreement. The current structure in the Act prevents industry organisations from being able to fund NPMPs and other biosecurity obligations (such as those under the Government/Industry Agreement) through a single consolidated levy. The result is that industry organisations and the Government need to set multiple levies to manage one pest or pathway (refer to section 2 of *Paper 5: Readiness and response* for further discussion about the Government/Industry Agreement).
28. **Option 5** seeks to **make it easier for regional councils to create small-scale management programmes**. This would be achieved through the following amendments to the Act and the Biosecurity (Small Scale Organisms Management) Order 1993 (the Order):
- amending section 100V(2)(a) of the Act to replace the term “unwanted organism” with the term “any organism” to allow small-scale management programmes to be used for any organism;
  - amending the Act to enable regional councils access to relevant powers under Part 6 of the Act that are required to implement a small-scale management programme if the relevant organism does not have unwanted status;
  - amending the Order to increase the timeframe for small-scale management programmes from three years to five years to allow regional councils enough time to control the organism and add the pest to their RPMPs for long-term management (if appropriate); and
  - amending the Order to increase the funding cap for the life of a small-scale management programme from \$500,000 to \$1 million.
29. Existing safeguards for small-scale management programmes would be retained under the Act such as section 100V(2)(a) which states that the regional council must be satisfied that the organism could cause serious adverse and unintended effects unless early action is taken to control it.
30. **Option 6** would **enable management agencies to provide exemptions from rules in NPMPs**, through amending sections 67 and 87 of the Act. The Act only allows the Minister to exempt a person from a NPMP rule. The rationale for this is that the entity that is authorised to create a rule (the Minister) should be the same entity that authorises any departure from it. However, it may be more practical to enable

management agencies, who are responsible for their respective NPMPs, to be able to provide exemptions from certain rules in NPMPs. This could provide a more timely and efficient process for providing exemptions to rules and empower management agencies to have a greater degree of control over their NPMPs. The existing safeguards provided in the Act, including section 67(2) and section 87(4) which set out the conditions for granting exemptions, would be retained.

31. **Option 7 would enable more than one legal entity to share management agency responsibilities.** NPMPs may cover several regions or the entirety of New Zealand. But the Act requires that a single legal entity is appointed as the management agency. While implementation of NPMPs can be shared, the ultimate responsibility and liability for implementing the plan may only rest with one party. In practice this may result in a central government agency, such as MPI, needing to either adopt this role or identify an entity to be appointed. Should there not be an entity willing or able to be appointed, MPI may need to consider the creation of a new public or private entity. Option 7 would enable multiple entities to share responsibilities jointly and severally for NPMPs. This could empower partnerships with iwi, regional councils, management agencies and central government agencies. This option would require amending the Act to include an enabling provision for a disputes resolution mechanism to address any disputes between the entities.
32. **Option 8 would enable management agencies and regional councils the function of issuing permits for pests in NPMPs or RPMPs.** Permissions to undertake an activity that contravenes section 52 and/or section 53 of the Act are the responsibility of Chief Technical Officers.<sup>3</sup> Providing the function of issuing permissions for pests contained in NPMPs and RPMPs to management agencies and regional councils would empower them to make decisions and improve accountability for their respective plans. It would also be more administratively efficient than for applying to CTOs for permissions.
33. **Option 9 seeks to amend section 78 (exemptions for RPMPs) to enable regional councils to remove exemptions from a regional pest or pathway management plan rule before the end of the original time frame.** This proposal would enable the revocation of an exemption from a rule in an RPMP in situations where exemption holders breach the conditions of their exemption, where they in effect nullify the exemption. If a person is repeatedly breaching exemption conditions, a regional council may wish to clearly state that their exemption is terminated.

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<sup>3</sup> Section 52 sets out a general duty that no person shall knowingly communicate, release or otherwise spread an unwanted organism unless the person is permitted by a chief technical officer. Section 53 sets out duties on owners of organisms, that if the person knows or suspects the organism contains or harbours a pest or unwanted organism, to not permit the organism to be sold, exhibited or propagated unless the person is permitted by a chief technical officer.

34. As a safeguard for robustness of decisions made to revoke an exemption, the criteria or process for revoking an exemption would need to be provided. The process could include:
- notification;
  - the opportunity to remedy any faults which has led to the revocation notification; and
  - imposing conditions that regional councils would consider to be a breach and a reasonable time period.

### 3.4. Assessment

35. The options are assessed against the following criteria:

<b>Effective</b>	<p>Does the option better protect New Zealand from biosecurity risk, while supporting our economy?</p> <p>Does the option lead to effective partnership and coordination between government and other players of the biosecurity system?</p>
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

36. Option 1, the status quo, would not address the issues identified in the problem definition.
37. Option 2 (make it easier to create NPMPs and RPMPs by simplifying the process) meets all the criteria by promoting greater use of an existing biosecurity risk management tool. Option 2 strongly supports both the effective and the efficiency criteria. Removing duplication and unnecessary procedural steps would promote greater use of management plans. Enabling plans to be developed more quickly would address the management gap that can occur during the transition from biosecurity responses to long-term management. This would not have any negative consequences on biosecurity protections because plans would still need to include robust evidence on biosecurity risk management processes before being approved.
38. Option 2 increases the flexibility of the Act through providing easier implementation of plans to address a previously identified gap in the transition from response to long-term management. Option 2 improves the clarity of the law as it would clarify that the steps to develop plans are not necessarily sequential and can be undertaken concurrently. Existing safeguards under the Act, including consultation requirements for developing a plan, financing requirements, requirements for what plans must contain, and consistency with the NPD, would remain, ensuring continued transparency for stakeholders.

39. Option 3 (enable integrated pest and pathway management plans) meets all the criteria by ensuring that consistent protection from biosecurity risk remains in place. Currently the Act requires separate pest or pathway management plans. Combining pest and pathway management plans removes duplication and encourages management plans to be made that covers both pest and pathways which would improve biosecurity protection. Option 3 would reduce the administrative and operational costs associated with having separate pest and pathway management plans. Having a single integrated plan for a pest and pathway where appropriate will provide easier access for stakeholders. It will increase clarity by providing a single source of biosecurity risk management requirements.
40. Option 4 (enable consolidated levies for NPMPs) meets most of the criteria. Option 4 will have minimal effect on the overall management of biosecurity risk in as it does not address the way biosecurity outcomes are achieved. Instead, it focuses on the method of collecting funds to support those outcomes. Option 4 is therefore neutral on the effective criterion.
41. Option 4 modernises the Act by enabling greater flexibility in how levies are collected and makes levy collection more efficient. The current structure prevents industry organisations from funding NPMPs and other biosecurity obligations (e.g., GIA obligations) through a single consolidated levy, meaning multiple levies are required to manage a single pest or pathway. Having the option to set a single consolidated levy would reduce administration costs and simplify the levy collection process. Levied parties could have greater clarity on their obligations and the process for levy collection. However, a single levy may reduce transparency on what outcomes and activities a levy may be funding.
42. Option 5 (make it easier for regional councils to create small-scale management programmes) meets most of the criteria. Option 5 is effective by assisting regional councils to better manage emerging pests in a time efficient way. Increasing the timeframe for small-scale management programmes to five years will allow regional councils enough time to control the organism and add the pest to their RPMP if long-term management is appropriate.
43. Option 5 modernises small-scale management programmes by better enabling the implementation of an existing tool that has not been widely used due to legislative inefficiencies and increasing the overall efficiency and use of administrative resources. This option does not impact the clarity of application of the tool, and existing legislative safeguards will remain in place.
44. Option 6 (enable management agencies to provide exemptions from rules in NPMPs) meets most of the criteria. Option 6 would not have an impact on the current protection of New Zealand from biosecurity risk. Exemptions to rules within NPMPs are already able to be granted by the Minister for Biosecurity. Enabling management agencies to provide exemptions to rules within NPMPs would only shift the decision-maker of the exemptions, which we do not expect to lead to better or worse biosecurity outcomes than the status quo.
45. Option 6 meets the adaptable and efficiency criteria by enabling a more timely and efficient process and providing management agencies to have a greater degree of control of the NPMPs they manage.

46. Option 6 provides better clarity than the status quo. Regulated parties would apply to the management agency that is responsible for the NPMP rather than to a Minister which the person may not have had any involvement with previously. The management agency will have developed and consulted on rules in a NPMP and will have a detailed understanding of their application.
47. Option 7 (enable more than one legal entity to share management agency responsibilities) meets most of the criteria. Option 7 is effective and adaptable. The proposal will enable several parties to jointly share responsibilities for a NPMP. This provides an additional tool for NPMPs that reflects that multiple groups often cooperate to manage a pest or pathway. Option 7 empowers partnerships with iwi, central government, regional councils, and industry on national pest and pathway management issues, which could lead to improved biosecurity outcomes.
48. Option 7 meets the efficiency criteria. Multiple entities would make decisions to deliver and implement a NPMP. The efficiencies that could be gained in decision-making from this would depend on the entities cooperating well. If the entities do not work well, this could decrease the overall efficiency of Option 7. However, there are existing safeguards in the Act to manage this risk. Under section 64(2) of the Act, the Minister for Biosecurity must make a decision on appointing a management agency for a NPMP. As part of this decision, the Minister needs to consider a range of factors to ensure the management agency would be successful. This includes the capacity of the management agency to manage the plan, including the competence and expertise of the agency's staff. If multiple entities are enabled under Option 7, the Minister would have to consider how effectively the multiple entities would cooperate to successfully deliver the plan with the same considerations.
49. Option 8 (provide management agencies and regional councils the function of issuing permits for pests in NPMPs and RPMPs) meets most of the criteria. Option 8 is neutral on the effective criterion. Permits for organisms contained in NPMPs and RPMPs are already able to be issued on the decision of a Chief Technical Officer, who is able to determine appropriate biosecurity risk management requirements. Enabling management agencies and regional councils to issue permissions would likely not create better or worse outcomes, as they are also well placed to determine appropriate biosecurity risk management requirements.
50. Option 8 would create greater clarity for stakeholders and be more operationally efficient for management agencies and regional councils. This is because it removes the need for management agencies and regional councils to have to apply to a Chief Technical Officer. The key benefit of this option is that it would empower the decision making of management agencies and regional councils and increase their accountability for decisions made under their respective plans.
51. Option 9 (enable regional councils to revoke an exemption prior to the timeframe stated in the exemption) meets of all the criteria. Option 9 strongly supports the effective criterion. Option 9 enables regional councils to revoke an exemption to an RPMP in situations where exemption holders breach the conditions of their exemption. This provides an additional tool to regional councils to better manage biosecurity outcomes.

52. Option 9 increases the operational efficiency of regional councils as it would enable regional councils to manage or address biosecurity risk caused by a breach of exemption conditions in a timelier manner than if the exemption were unable to be revoked until a specified timeframe. Clarity for stakeholders and exemption holders would be ensured by providing legislative criteria for the process of revoking an exemption. This would ensure decision making is fair and robust.

### 3.5. Cost benefit analysis

#### Options 2, 3, 4, 5, and 7<sup>4</sup>

53. These options aim to reduce administrative complexity and make processes relating to RPMPs and NPMPs more efficient. It is likely that if progressed, a combination of these options will reduce duplication and cross-over of work between central government, regional government, and management agencies, and provide greater flexibility.

#### Option 5

54. Increasing the timeframe to five years for small-scale management programmes will allow regional councils additional time to control the organism and add the pest to their RPMPs for long-term management (if appropriate), thereby also eliminating extra work to redevelop and implement small-scale management programmes if the previous timeframe (three years) was insufficient. Regional councils have provided feedback that three years is insufficient.
55. Increasing the funding cap from \$500,000 to \$1 million for the life of the small-scale management programme could provide regional councils more resources to manage a pest and will better reflect the inflationary pressures since the Order was promulgated. The figure of \$1 million was suggested after using the Reserve Bank's inflation calculator and rounding to the figure to the nearest \$100,000.<sup>5</sup>
56. There are no additional costs that apply to Option 5. The costs in developing, implementing, and managing a small-scale management programme are funded by regional councils within their baselines.

#### Option 6, 8 and 9<sup>6</sup>

57. These options provide greater efficiencies in administrative processes and devolve greater decision-making to regional councils and management agencies that administer the relevant RPMPs and NPMPs. Greater efficiencies in management of NPMPs is expected to result in cost efficiencies over time.

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<sup>4</sup> Option 2 seeks to make it easier to create NPMPs and RPMPs, through simplifying the process for making these plans. Option 3 seeks to enable (but not require) integrated pest and pathway management plans. Option 4 would enable (but not require) the ability to have consolidated levies for NPMPs. Option 5 seeks to make it easier for regional councils to create SSMPs. Option 7 would enable more than one legal entity to share management agency responsibilities.

<sup>5</sup> [www.rbnz.govt.nz/monetary-policy/about-monetary-policy/inflation-calculator](http://www.rbnz.govt.nz/monetary-policy/about-monetary-policy/inflation-calculator). Calculations performed comparing Q3 1993 with Q2 2023.

<sup>6</sup> Option 6 would enable management agencies to provide exemptions from rules in NPMPs. Option 8 would provide management agencies and regional councils the function of issuing permissions for pests in NPMPs or RPMPs. Option 9 seeks to amend section 78 (exemptions for RPMPs) to enable regional councils to revoke an exemption prior to the timeframe stated in the exemption at time of issuing.

58. A detailed cost benefit analysis will be undertaken on the final combination of policy proposals that are progressed following consultation.

### **3.6. Preferred option**

59. Our assessment finds that all the options to improve NPMPs, RPMPs and small-scale management programmes (Options 2 to 9) are better than the status quo. The options are also not mutually exclusive. Therefore, we recommend all the options.
60. While this may seem like an extensive range of amendments to pest management powers, we note that many of these options are enabling rather than compulsory. In other words, decision-makers for NPMPs, RPMPs and small-scale management programmes may not necessarily change how they make decisions, or the kinds of decisions they make. We are instead modernising the Act to deliver a more flexible toolbox for regional councils and management agencies. These entities are well-placed to deliver long-term management outcomes in their respective areas of responsibilities. These options meet all the criteria and would deliver on the effective and adaptable criteria without significant downsides to efficiency or clarity.

### 3.7. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

	Option 1 – status quo	Option 2 – simplify the process for developing NPMPs and RPMPs	Option 3 – enable integrated pest and pathway management plans	Option 4 – enabling consolidated levies for NPMPs	Option 5 – easier for councils to create small-scale management programmes (SSMPs)	Option 6 – enable management agencies to provide exemptions from rules in NPMPs	Option 7 – enable more than one legal entity to share management agency responsibilities for NPMPs	Option 8 – enable management agencies and regional councils to issue permissions for pests in plans	Option 9 – enable councils to revoke an exemption to an RPMP before the specified timeframe
<b>Effective</b>	0	++ This process for making NPMPs and RPMPs would be more effective and would encourage greater use of these long-term management tools, leading to better biosecurity management.	+ Currently the Act requires separate pest or pathway management plans. Combining pest and pathway management plans removes duplication and encourages management plans to be made that covers both pest and pathways.	0 This option seeks to enable consolidation of levies in instances multiple levies may be collected to manage a single pest or pathway. Enabling consolidated levies would not create better or worse biosecurity outcomes than the status quo – it simply changes how the funds are collected.	+ Enabling greater use of SSMPs will assist regional councils in managing emerging pests in a time efficient way. Increasing the timeframe for SSMPs to five years would provide councils enough time to control the organism and add it to their RPMP (if appropriate).	0 Exemptions to rules within NPMPs are already able to be granted by the Minister for Biosecurity. Enabling management agencies to provide exemptions to rules within NPMPs would not create better or worse biosecurity outcomes than the status quo.	+ Enabling multiple entities for NPMPs could increase coordination and partnership and improve biosecurity outcomes by enabling biosecurity risk management processes to reflect differences in areas and pathways between regions.	0 A Chief Technical Officer already issues permits after setting appropriate risk management measures. Enabling management agencies and councils to issue permits should not have better or worse biosecurity outcomes. These parties are also well placed to set risk management measures.	++ This would lead to better biosecurity outcomes by enabling regional councils to revoke an exemption to an RPMP in situations where exemption holders breach the conditions of their exemption.
<b>Adaptable</b>	0	+ This option enables better use of an existing tool within the Act.	+ Future proofs the Act by enabling the use of either combined or separated plans based on which approach would lead to greater biosecurity outcomes.	+ Provides greater flexibility by being able to set differential levy rates in relation to separate purposes.	+ SSMPs have a limited scope, short timeframe and funding cap so councils have seldom used it. Option 5 would enable greater use of this existing tool by removing these barriers.	+ This would enable management agencies to have greater degree of control over their NPMPs and ensure they are well placed to respond to future changes in biosecurity risk management.	+ The proposal will enable several parties to jointly share responsibilities for a NPMP. This provides an additional tool for NPMPs that reflects that multiple groups often cooperate to manage a pest or pathway.	+ Would empower management agencies and councils to make decisions, and improve accountability for their respective plans. It will also create an additional tool for future biosecurity risk management.	++ Would provide an additional tool for councils to manage biosecurity risk, by being able to revoke an exemption that is no longer in the best interest of good biosecurity.
<b>Efficient</b>	0	++ Removing unnecessary process promotes greater use of the plans. This better enables transition from a response to long-term management, plans would still include robust evidence on biosecurity risk management. Removing duplication would enable plans to be developed faster and much more efficiently. Ministers, central	++ This would reduce the administrative and operational costs associated with having separate pest and pathway management plans.	+ Having the option to set a single consolidated levy would reduce administration costs and simplify the levy collection process.	+ The timeframe for these plans is currently three years. Increasing the timeframe to five years will make more efficient use of the administrative resource required to develop these plans.	+ The Act only allows the Minister for Biosecurity to exempt a person from a rule in a NPMP. Enabling management agencies, who are responsible for implementing NPMPs, to be able to provide exemptions could provide a more timely and efficient process.	+ Improves efficiency as multiple entities deliver and implement a NPMP, rather than an individual agency undertaking separate processes to work with relevant entities. These efficiencies depend on the entities cooperating. Existing safeguards under section 64(2) manage this risk.	+ This would be more administratively efficient than applying to MPI's Chief Technical Officers for permissions, which is the current process for issuing permission under the Act.	+ This would enable regional councils to manage or address biosecurity risk caused by a breach of exemption conditions in a more timely manner than if the exemption were unable to be revoked until a specified time.

	Option 1 – status quo	Option 2 – simplify the process for developing NPMPs and RPMPs	Option 3 – enable integrated pest and pathway management plans	Option 4 – enabling consolidated levies for NPMPs	Option 5 – easier for councils to create small-scale management programmes (SSMPs)	Option 6 – enable management agencies to provide exemptions from rules in NPMPs	Option 7 – enable more than one legal entity to share management agency responsibilities for NPMPs	Option 8 – enable management agencies and regional councils to issue permissions for pests in plans	Option 9 – enable councils to revoke an exemption to an RPMP before the specified timeframe
		government, or regional councils would not be required to develop an initial proposal to develop a plan, decreasing the time taken to have a plan finalised and implemented.							
<b>Clarity</b>	0	+ Would clarify that the steps to develop plans are not necessarily sequential and can be undertaken concurrently. The consultation requirements for developing a plan would remain, ensuring continued stakeholder clarity.	++ Having a single integrated plan for a pest and pathway where appropriate will provide easier access for stakeholders. It will increase clarity on their obligations, by providing a single source of biosecurity risk management requirements.	+ Levied parties would have greater clarity on their obligations and the process for levy collection.	0 The requirements for SSMPs established in the NPD, as well as the existing safeguards in the Act, will remain.	+ Delegating exemptions to management agencies would provide clarity for regulated parties. Regulated parties are familiar with the management agency (compared with the Minister) and it is the management agency that has a detailed understanding of the NPMP.	0 Could decrease clarity for stakeholders if they do not understand which entity can assist them. However, this risk would likely be addressed by the Minister needing to be satisfied that the multiple entities could implement the NPMP. Clarity would be provided on the central contact point for the NPMP.	+ This option may increase clarity for stakeholders and those wishing to seek a permission for a pest, as the function would sit with the responsible management agency or regional council, rather than MPI.	+ Clarity for stakeholders and exemption holders would be ensured by providing legislative criteria for the process of revoking an exemption. This would ensure decision making is fair and robust.
<b>Overall rating</b>	0	++ This option provides easier access to an existing tool for long-term management, by reducing the time and costs associated with developing national and regional pest and pathway management plans. This may encourage an increase in the development and use of these plans.	++ This will provide the option of having a single plan covering specific pests and pathways. This may reduce administrative and operational costs associated with having separate pest and pathway management plans.	+ This will improve administrative efficiencies and would support the proposal to enable combined pest and pathway management plans.	+ This option will encourage greater use of SSMPs as an effective tool for regional councils to manage emerging risks, including organisms that may not be included in a regional pest management plan.	+ This could provide a more timely and efficient process for providing exemptions to rules, rather than the Minister for Biosecurity providing an exemption from a rule in a NPMP. It would also provide management agencies a greater degree of control over NPMPs.	+ This could empower partnerships with iwi, central government, regional councils, and the industry, leading to improved biosecurity outcomes. There is a risk that Option 7 could create complexity with multiple entities working together. However, this would be mitigated by existing safeguards in section 64(2).	+ Management agencies and regional councils are best place to issue permissions for the pests they manage, and this option would empower their decision making and improve accountability for individual plans.	++ This option would enable the revocation of an exemption from a rule within an RPMP in situations where exemption holders breach the conditions of their exemption, where they in effect nullify the exemption, better enabling regional councils to manage changes in biosecurity risk.

## 4. Alignment of long-term management outcomes

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### 4.1. Background

61. While some pests or diseases arriving in New Zealand may be too hard to eradicate, we may still be able to minimise their damage. Parties acting independently is not the most effective way to manage a pest or disease. New Zealand needs a coordinated approach to reduce the impacts of pests. Regulations or rules can be used to require people to manage pests in certain ways where individual actions are not effective.
62. Part 5 of the Act contains powers for the Minister for Biosecurity to align long-term management outcomes through:
  - a national policy direction under section 56; and
  - the power for the Minister for Biosecurity to assign responsibility for a decision on a harmful organism or pathway.

#### The National Policy Direction for Pest Management

63. The Minister for Biosecurity provides leadership for long-term management through section 56. Section 56 requires the Minister to make a national policy direction and for the Minister to follow the process prescribed in the Act. The purpose of a national policy direction is to ensure that activities under Part 5 of the Act provide the best use of available resources for New Zealand's best interest and align with one another where necessary, to contribute to pest management.
64. Section 56 states that there can only be one national policy direction and it may be amended, revoked or replaced.
65. The National Policy Direction for Pest Management (the NPD) was made in 2015.<sup>7</sup> It:
  - sets out the framework for developing national and regional pest or pathway management plans and small-scale management programmes;
  - clarifies the Act's requirements for these plans; and
  - ensures that plans are aligned and consistent, both nationally and regionally.

#### Regulations for the Minister to assign responsibility for a pest or pathway management decision

66. Section 55 of Act provides the Minister powers to assign responsibility for making decisions on a pest or pathway. They were included as part of the 2012 reforms to the Act to address a gap in the system where:
  - a pest or pathway is not being managed under biosecurity response or a pest or pathway management plan; or
  - where an agreement cannot be reached on who is responsible for managing a pest or pathway.

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<sup>7</sup> [National Policy Direction for Pest Management](#)

67. The Biosecurity (Process for Assignment of Responsibility for Decision on Harmful Organism or Pathway) Regulations 2016 (the Process for Assignment Regulations) set out the process for the Minister to follow to assign responsibility. The process for the Minister to assign responsibility set out in the regulations contains 12 steps. For applications for an urgent issue, the process is eight steps. Some of the steps include (this is not an exhaustive list and is intended to convey the number of prescriptive requirements and steps in the Process for Assignment Regulations):
- submitting an application to the Minister setting out a range of information including the risks posed by a harmful organism or pathway, why the Minister should assign responsibility, why collective action would be better than no collective action, and the outcome desired by the applicant;
  - the Director-General must prepare advice on a range of matters including whether the harmful organism or pathway is capable of causing significant adverse effects to economic well-being, the environment, human health, and the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga; and
  - the Director-General must identify why the issue has not been resolved, sources of funding for management action, and a range of other matters.

## 4.2. Problem or opportunity

68. Biosecurity is a shared responsibility and it requires different groups to operate at all levels - national, regional and local – to be effective. It is important to consider how the Act could support the biosecurity system with national oversight, coordination, and accountability to enable responsibilities and activities to be coordinated and delegated appropriately. We have identified three particular pain points to do with limited or ineffective tools to align national activities, which could be addressed to better support long-term management at a national level.
69. The current NPD does not set specific direction for specific pests or diseases. Rather it provides mandatory considerations for what NPMPs, RPMPs and small-scale management programmes must contain. The Act states that there is only one NPD. This means that if the government would like to update only one aspect of the NPD, the required consultation process opens the whole NPD for review and potential challenge.
70. In 2021, the Parliamentary Commissioner for the Environment released the report, *Space invaders: A review of how New Zealand manages weeds that threaten native ecosystems*.<sup>8</sup> The report included several recommendations for the NPD, including that the NPD provide specific direction on native ecosystem weeds either through:
- rewriting the existing NPD to include several targeted sections on the management of different pests already present in New Zealand (including predators, browsers, invertebrates, pathogens, plants) or including one specifically devoted to the management of native ecosystem weeds; or
  - amending section 56 of the Act to allow for multiple targeted NPDs.

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<sup>8</sup> [Space Invaders Report](#), Parliamentary Commissioner for the Environment (2021).

71. The Act does not clearly enable new regulations that could give effect to baseline objectives, policies and/or rules for a pest and pathway management. In certain situations, there might be a need for consistent rules to manage pests of national significance across different regions. Enabling regulations to create nationally consistent baseline objectives, policies and/or rules could assist with this and enhance visible national leadership for pest and pathway management issues where appropriate. This includes ensuring rules contained in RPMPs are aligned with neighbouring regions, and, where necessary, aligned with national priorities. For example, nationally consistent rules could be particularly beneficial for the management of wilding conifers, where consistent rules could be included in RPMPs to ensure a nationally aligned approach to managing wilding conifers.
72. Separately, the Act enables the Minister to assign responsibility under section 55. Section 55 and the Process for Assignment Regulations were intended to be seldom used. However, they have not been used since they came into force in 2012.<sup>9</sup> Further, even if the Minister assigned responsibility for a pest or a pathway to an entity, the entity is not required to act. As such, this may be an ineffective tool.

### 4.3. Options

73. **Option 1** is the **status quo**. Keeping the current arrangement means national oversight of pest management would remain limited. We would continue to use the NPD to provide leadership on procedural matters and coordination of activities.
74. **Option 2** would **enable multiple NPDs to be made**. Under this option we would amend section 56 of the Act to allow multiple NPDs to be made. This proposal responds to the Parliamentary Commissioner for the Environment's recommendation that national policy direction on native ecosystem weeds should be provided either by rewriting the existing NPD to include several targeted sections or to allow for multiple targeted national policy directions.
75. Enabling more than one NPD could ensure that, if an NPD is amended, consultation can be focused on a specific topic, rather than opening the whole instrument up for review and potential challenge.
76. There would be no requirement for there to be more than one NPD.
77. Option 2 could be implemented with any other option.
78. **Option 3** would **enable new regulations to be made to create nationally consistent baseline objectives, policies or rules for pest management**. Option 3 would amend section 165 of the Act to enable the creation of regulations that could enable nationally consistent baseline objectives, policies, and/or rules to be set for a pest or pathway. For example, baseline objectives, policies and/or rules could be used by regional councils in their RPMPs for pests that of a concern nationally and would benefit from a consistent approach across regions or by Crown agencies that administer Crown land.

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<sup>9</sup> An application was made to use section 55 and the Process for Assignment Regulations for a decision on the response to feral dogs in Northland. The Far North District Council had a policy in place for dogs in their district, which complies with section 10 of the Dog Control Act 1996. As such, section 55 and the Process for Assignment Regulations were not used.

79. There is an opportunity to provide nationally consistent rules for managing pests of national significance across different regions and at a national level. The existing NPD focusses on setting out the framework for:
- developing the content of NPMP, RPMPs and small-scale management programmes;
  - clarifying the Act's requirement for these plans;
  - ensuring that plans are aligned and consistent; and
  - outlines the requirements for developing good neighbour rules for RPMPs.
80. Enabling regulations to create nationally consistent baseline objectives, policies or rules could assist enhancing visible national leadership. As with any new regulations, there would be Cabinet requirements to consult before any decisions would be made.
81. Option 3 could be implemented with any other option.
82. **Option 4** would address section 55 and its associated regulations. Strengthening section 55 to require that action be taken would increase the effectiveness of this tool to manage a biosecurity risk. Alternatively, if section 55 and its regulations are not considered to achieve an intended outcome and it is rarely used, it could be removed from the Act.
83. Three sub-options are proposed under Option 4. Options 4A and 4B could be implemented together and are not mutually exclusive. Option 4C can only be progressed by itself (i.e. not together with Options 4A and/or Option 4B):
84. **Option 4A strengthens section 55 by requiring that the party that is assigned responsibility must take action to manage the harmful organism or pathway.** This means that when the Minister for Biosecurity assigns responsibility, the assigned party has to make a decision on the harmful organism or pathway and then must undertake management activities to manage the risk.
85. Currently, section 55 and its associated regulations enable the Minister to assign responsibility to any party. Under the strengthened power in Option 4A, that means the Minister for Biosecurity could potentially compel another Minister to act. We propose a carve out, where the Minister for Biosecurity could invite (not require) another Minister to make a decision and take action to manage a harmful organism or pathway. This is because other Ministers are responsible for their portfolios and legislation. Although it may be appropriate for the Minister to assign responsibility for a decision to the relevant Minister (e.g. a human disease vector to the Minister of Health), it is not appropriate for the Minister of Biosecurity to override the responsibilities of another Minister and impose action.
86. Our intention is for the Act to be quite clear on what 'taking action' to manage the risk would involve. However, we have not yet developed what this threshold would be. It may involve, for example, assigned parties having to use a tool under Part 5 of the Act to manage the harmful organism or pathway. That might look like the assigned party:
- submitting a proposal for a national or regional pest or pathway management plan;
  - proposing a small-scale management programme; or
  - undertaking other pest management activities or programmes, either individually or as a collective effort with other groups.

- 87. We are interested in getting views on what this threshold could be during public consultation.
- 88. Option 4A could be implemented with Option 2, Option 3, and Option 4B. It cannot be implemented with Option 4C.
- 89. **Option 4B** would retain section 55 and **streamline the process set out in regulations to remove unnecessary steps and/or duplication**. The process for the Minister to assign responsibility set out in the regulations is overly complex and contains 12 steps. For applications for an urgent issue, the process is eight steps. The regulations could be streamlined to only require three steps: submitting an application to the Minister, MPI consulting with affected parties, and the Minister making a decision on whom to assign responsibility for a decision.
- 90. Option 4B could be implemented with Option 2, Option 3, and Option 4A. It cannot be implemented with Option 4C.
- 91. **Option 4C** would **repeal section 55 of the Act and revoke its associated regulations**. This would fully remove the power for the Minister to assign responsibility and its associated regulations.
- 92. Option 4C could be implemented with Option 2 and Option 3. It cannot be implemented with Option 4A and Option 4B.

**4.4. Assessment**

93. The options are assessed against the following criteria:

<b>Effective</b>	Does the option lead to effective partnership and coordination between government and other players of the biosecurity system?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?  Are roles and responsibilities assigned appropriately and clearly between central government, local government, industry, and local communities?

- 94. Under Option 1, while the tools for long-term management work well, they do not always align between different regions or with national priorities.
- 95. Option 2 (enable multiple NPDs) could lead to better biosecurity outcomes by providing clear targeted direction on the management of different organisms. Different NPDs would enable tailoring biosecurity outcomes and practices between different organisms to be considered and used to create flexible, tailor-made policies to achieve biosecurity objectives. Option 2 would provide for future flexibility in the Act to make targeted policy directions, if that was determined to be the most appropriate approach to better biosecurity outcomes.

96. Option 2 is more efficient than the status quo because enabling more than one NPD could ensure that, if an NPD is amended, consultation can be focused on a specific topic, rather than opening the whole instrument up for review and potential challenge. Option 2 may improve clarity by providing targeted direction for the management of specific organisms through multiple NPDs, rather than an overly broad direction for all long-term management activities. An NPD could be developed for a particular pest or disease and lead to effective partnership between MPI, other Crown agencies, regional councils, management agencies and other stakeholders. This enables MPI to provide leadership and direction on national-level objectives or outcomes, rather than relying singularly on NPMPs and RPMPs for direction on long-term management issues.
97. Option 3 (enable new regulations to be made to create nationally consistent baseline objectives, policies or rules for pest management) has a key benefit of increased clarity on the desired national outcomes for long-term pest management. Option 3 could achieve better biosecurity outcomes through the provision of clear and targeted direction for the management of different organisms. This would also enhance visible national leadership where appropriate. Option 3 ensures the Act remains flexible in the future and policy directions can adapt to any future changes in biosecurity risk. However, a key consideration is that any new regulations that bind the Crown could have significant financial implications for Crown agencies that undertake pest management on Crown owned land, including the Department of Conservation, Land Information New Zealand and the New Zealand Defence Force.
98. Option 3 improves the efficiency of pest management by ensuring rules and policies are nationally consistent. Option 3 increases clarity on the desired outcomes for pest management nationally. By creating consistent rules and policies through a new tool in the Act, long-term management activities can be used more efficiently and lead to better biosecurity outcomes that are consistent across the entirety of New Zealand.
99. Option 3 could be argued to be moving towards more prescription and a 'one-size-fits-all' approach. Effective pest management does not necessarily mean identical rules for all places. It means tailoring approaches to best achieve the intended goals. We agree and note that this is the purpose of having different tools for pest management at the national, regional and local levels. However, we also note that the regulatory process under Option 3 would need to take into account different regional settings during the policy development process. Moreover, as with any regulation, there would be consultation to seek input into how appropriate a proposed regulation would be, and how best to balance local needs with national consistency and alignment. The Parliamentary Commissioner of Environment's report on weeds recommended greater leadership and action.
100. Option 4A meets only one of the criteria (adaptable) as the policy design for this option has not yet been developed and a robust analysis against the other criteria could not be completed. There are potential issues with legally requiring the assigned person/s or group to take action to manage a harmful organism or pathway that need to be examined if the option proceeds. Funding or resources would not be provided with the assignment of responsibility.

101. If designed well, Option 4A could lead to better biosecurity outcomes by establishing a requirement for the person assigned responsibility to take action. This may, for example, lead to the action of creating a pest or pathway management plan. Option 4A strengthens an existing power that is not achieving its intended outcome, which is to assign responsibility for a pest or that no one is actively taking responsibility for managing.
102. Option 4A would not necessarily be more efficient than the status quo, as it depends on what action is taken by the assigned party. There is uncertainty that requiring action will improve biosecurity outcomes and promote the effective use of section 55 as a tool. If the action taken by the assigned party is unsatisfactory or poorly implemented, it would not necessarily be an efficient or effective use of resources. While we do not yet know what the Act will require in terms of 'taking action', this is something that we can address in the final policy design to ensure the expectation in the Act on assigned parties is clear.
103. Arguably, Option 4A could be considered efficient in that it could deliver on the intention of the responsible person or agency taking action for the benefit of the biosecurity system as a whole, which would reduce the administrative burden on other parties not taking collective action to manage a harmful organism or pathway. However, requiring action to be taken with no accompanying provision of funding would introduce a cost burden on the assigned party as they would be required to take action to manage the harmful organism and may not have the funds within their budget to undertake the management action. The assigned party may have better use of their funding and override their ability to determine their priorities. This is particularly pertinent for councils or Ministers who determine their priorities in relation to their strategies, policy commitments, and in the case of councils, their resource management plans.
104. Option 4B meets all the criteria. Option 4B reduces administrative burden associated with section 55 by streamlining the process to assign responsibility under the regulations. This makes it more efficient for the Minister to assign responsibility. Option 4B could enable greater use of section 55, which means responsibilities for a pest or pathway is better allocated across central government, regional councils and other relevant entities. In that regard, Option 4B supports the clarity criteria.
105. Both Options 4A and 4B strengthen the existing tool available under section 55 and meet some of the criteria. If these options proceed, it is recommended that they are implemented as a package. Establishing a legal requirement for a responsible party to take action (rather than just making a decision) may assist in improving long-term biosecurity outcomes and could increase the efficiency of the tool. However, this would depend on a robust policy being developed for Option 4A.
106. Option 4C will lead to no better or worse biosecurity outcomes than the status quo and will not impact on the efficiency or clarity around long-term management activities. However, this option does not meet the adaptable criteria, as it does not deliver legislation that is future-proof and enabling.

## **4.5. Cost benefit analysis**

107. This set of proposals is not expected to have cost or impacts with fiscal measures for government. Their consideration and implementation are a part of the regular work of government. We analysed the options using multi-criteria analysis.

108. Where the option provides regulation-making powers, cost benefit analysis would be undertaken during the development of the specific regulation.
109. The exceptions to this are Options 3 and Option 4A, which would impose costs. Option 3 could impose costs on those who are required to comply with any new regulations, including regional councils and Crown agencies. Option 4A would impose costs on the responsible person, agency or regional council as no funding would be provided when the responsibility is assigned.

## **4.6. Preferred option**

110. These options are not mutually exclusive. Our preferred option is for Options 2, 3, and 4B to proceed because these options all improve on the status quo and deliver on all the criteria.
111. Proceeding with Option 4A is dependent on the development of a robust policy design to strengthen section 55 and its associated regulations and addressing design issues, including clarifying what action would be taken and if this action could be legally required. Proceeding with Option 4C removes a tool without enabling MPI to first improve its usability. We would like to test whether section 55 could be improved by Option 4B before opting to removing it.

## 4.7. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

	Option 1 – status quo	Option 2 – enable multiple NPDs to be made	Option 3 - create nationally consistent baseline objectives, policies or rules for pest management	Option 4A – assigning responsibility requires action to be taken	Option 4B – streamline process in regulations to remove unnecessary steps and duplication	Option 4C - Remove section 55 of the Act and revoke its associated regulations
<b>Effective</b>	0	+ Enables tailored national direction to be used to create flexible policies for biosecurity objectives. Providing targeted direction on the management of different organisms could lead to better outcomes.	+ Achieves better biosecurity outcomes by creating consistent rules for managing pests across different regions. This could also enhance visible national leadership where appropriate. The NPD only provides requirements to promote alignment and consistency of the contents of NPMPs, RPMPs and SSMPs and does not provide objectives, baselines, policies or rules for specific pests and diseases at a national level.	0 Could lead to better outcomes. But without the final policy design, there is uncertainty on what actions would be taken. The benefits would only be realised if the action reasonably improves biosecurity. Other Ministers of the Crown would only be invited to make a decision and take action, they could not be required to do so, whereas other parties would be legally bound to make a decision and take action on a harmful organism or pathway.	+ Would achieve better biosecurity outcomes by enabling the Minister to assign responsibility more quickly. This would strengthen the use of and merit of section 55.	0 Section 55 and its regulations are not regularly used. Removing section 55 would lead to no better or worse biosecurity outcomes than the status quo.
<b>Adaptable</b>	0	+ Would provide for future flexibility in the Act to make targeted policy directions, if that is the most appropriate approach for better biosecurity outcomes.	+ Creates an additional tool in the Act to enable nationally consistent baseline objectives, policies, and rules for pests and pathways.	+ Could strengthen section 55 and be more fit-for-purpose. However, the policy details have not been designed. The power may not be sustainable if requiring action does not include associated funding.	+ Modernises the regulations, making the process more efficient and less complex, encouraging better use of the tool in the future.	0 As the tool has never been used, it should not have any impact on the status quo. Option 4C reduces powers available for long-term management, but equally, removes a redundant provision that helps to simplify the legislation.
<b>Efficient</b>	0	+ Enabling more than one NPD could ensure that, if an NPD is amended, consultation can be focused on a specific topic, rather than opening the whole instrument up for review and potential challenge. It would provide clarity on the national direction for pest or disease matters. Having multiple NPDs may provide an administrative burden for MPI and those councils and Crown agencies that would be bound by the regulations. We consider the overall impact is a more efficient pest management system.	0 Consistent rules and policies for pest management nationally could improve the efficiency of compliance and enforcement. However, new regulations that bind the Crown could have significant financial implications for Crown agencies that undertake pest management on Crown owned land, including the Department of Conservation, Land Information New Zealand and the New Zealand Defence Force.	0 The efficiency of this option depends on if the action taken by the assigned party. For example, if the action is unsatisfactory or poorly implemented, it would not necessarily be an efficient use of resources.	+ Would increase the efficiency of the existing tool by removing unnecessary steps set out in the regulations. This would also make the use of this tool more effective.	0 Section 55 is inefficient as its use will not necessarily result in action. Section 55 has never been used. Removing section 55 would not have an impact on the efficiency of the biosecurity system.
<b>Clarity</b>	0	+ May increase clarity for stakeholders by providing targeted direction to manage specific organisms, rather than a broad direction for all long-term management activities.	++ Would provide increased clarity on the desired outcomes for pest management nationally.	0 We cannot assess clarity as the policy details have not been developed. The final policy design would need to ensure that this expectation (and what it involves) is clear.	+ Greater use of section 55 means responsibilities for a pest or pathway may be better allocated across central government, regional councils and other relevant entities.	0 Option 4C could simplify the law by removing an ineffective tool from the Act. The improvement on clarify is likely to be minor.

	Option 1 – status quo	Option 2 – enable multiple NPDs to be made	Option 3 - create nationally consistent baseline objectives, policies or rules for pest management	Option 4A – assigning responsibility requires action to be taken	Option 4B – streamline process in regulations to remove unnecessary steps and duplication	Option 4C - Remove section 55 of the Act and revoke its associated regulations
<b>Overall rating</b>	0	<p style="text-align: center;">+</p> <p>There is no clear policy rationale for having a single NPD. Rather it is the way that section 56(1) was drafted that restricts it to being a single disallowable instrument.<sup>10</sup> Enabling more than one NPD may make the law more tailored and effective.</p>	<p style="text-align: center;">+</p> <p>Enabling nationally consistent biosecurity objectives would ensure a consistent approach where appropriate and enhance national leadership where appropriate. However, there could be significant financial implications for Crown agencies if new regulations were to bind Crown agencies. Option 3 could be argued to be moving towards more prescription and a 'one-size-fits-all' approach. Effective pest management does not necessarily mean identical rules for all places. However, Option 3 would need to take into account different regional settings during the policy development process. Moreover, as with any regulation, there would be consultation to seek input into how appropriate a proposed regulation would be, and how best to balance local needs with national consistency and alignment.</p>	<p style="text-align: center;">0</p> <p>This option aims to strengthen section 55 by require action to manage a harmful organism or pathway. However, the policy detail has not been developed. There is significant uncertainty on what action could be taken and whether it leads to better biosecurity. We therefore do not know if Option 4A is better or worse than the status quo.</p>	<p style="text-align: center;">+</p> <p>This option will strengthen the existing section 55 provision and bring the processes established in the regulations in line with policy intent of section 55.</p>	<p style="text-align: center;">0</p> <p>Section 55 is likely not effective in its current form and is rarely used.</p>

<sup>10</sup> A disallowable instrument is a legislative instrument that enables Parliament to 'disallow' it (i.e. declare that the instrument no longer has legal effect). An Act states whether an instrument is a disallowable instrument.

## 5. Management of unwanted organisms and notifiable organisms

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### 5.1. Background

#### Unwanted organisms

112. An unwanted organism means any organism that a Chief Technical Officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health. Unwanted organisms are listed in the Official New Zealand Pest Register.<sup>11</sup> Our estimate is that the register has 15,000 organisms listed as unwanted. Examples of unwanted organisms include:

- Undaria – an invasive seaweed with its ability to quickly establish and outcompete native marine species.
- Myrtle rust – a serious fungal disease considered to pose serious risk to significant natives such as pōhutukawa, ramarama, rata and mānuka
- Wallaby's – introduced herbivores that damage native forests, destroy native species habitat and food sources and compete for feed with sheep, cattle, and other livestock
- Wandering willie – a pest plant, the varieties of which are popular indoor house plants. This pest smothers ground in light to deep shade, preventing the seedlings of native species from establishing.

113. When an organism is designated as an unwanted organism, the powers to eradicate or manage the organism under Part 6 of the Act become available (e.g. powers to control the movement of goods in an area, or powers to direct people to treat or destroy goods). There are also duties and restrictions under sections 52 and 53.

114. Section 52 states no person shall knowingly communicate, cause to be communicated, release, or cause to be released or otherwise spread any pest or unwanted organism.

115. Section 53 states that the owner or person in charge of an organism which they know or suspects contains or harbours a pest or unwanted organism, must not:

- cause or permit that organism to be in a place where organisms are offered for sale or exhibited;
- sell or offer that organism for sale;
- propagate, breed, or multiply the pest or unwanted organism or otherwise act in a manner that is likely to encourage or cause its propagation, breeding, or multiplication.

116. Sections 52 and 53 apply automatically when an organism is declared as unwanted.

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<sup>11</sup> <https://pierpestregister.mpi.govt.nz/>

117. A Chief Technical Officer may permit an owner or person in charge of an organism to carry out an act otherwise prohibited by sections 52 and 53. Most permissions need to have a biosecurity benefit or outcome to be considered for approval. There are exceptions to this, which can be discussed before applying. A person may apply for a permission to handle unwanted organisms for the purposes of:
- education;
  - research;
  - pest management or removal/disposal; or
  - any other purpose that the Chief Technical Officer approves.
118. During the biosecurity response for freshwater golden clam (*Corbicula fluminea*) which was declared as an unwanted organism, there were applications to a Chief Technical Officer for permissions to extract water from waterways. Permissions were required to avoid criminal liability from extracting water. Similar cases have occurred for the passage of water through a hydro-electric power station, where a permission was required to avoid criminal liability for power companies.
119. Currently there are no provisions in the Act that clarify what is required to remove unwanted organism status. MPI has operational processes to remove unwanted organism status. This process involves an assessment and consultation on the removal of unwanted organism status and providing advice to a Chief Technical Officer on recommendations to remove unwanted organism status.

### **Notifiable organisms**

120. Notifiable organisms are often considered a subset of UOs. Notifiable organism status creates a requirement for people to report its presence. Notifiable organisms are organisms that would impact the economic viability of New Zealand's animal and plant production, biodiversity, human health, or trade and market access. The process for declaring a notifiable organism is set out under the Act. Organisms are declared notifiable by the Governor-General through Order in Council.
121. Notifiable organisms are listed in the Biosecurity (Notifiable Organism) Order 2016. Notifiable organisms include pests and diseases of major concern, including foot and mouth disease, fruit flies, malarial mosquitos, and the rabies virus.
122. Under section 46, every person in New Zealand is legally obliged to notify a Chief Technical Officer if they suspect the presence of a notifiable organism. Notifiable organism status can assist in a biosecurity response by requiring suspected cases of these pests and diseases to be notified to a Chief Technical Officer. Early notification can assist MPI in a response to eradicate, control or contain a notifiable organism and prevent it from establishing in New Zealand.
123. Notifiable organism status provides for:
- the gathering of information on disease occurrence to understand an organism's status in New Zealand;

- enabling New Zealand to meet the World Organisation for Animal Health requirements, which enable a country to declare freedom from significant diseases (all organisms listed by the World Organisation for Animal Health that New Zealand wishes to declare freedom from need to be categorised as a notifiable organism for surveillance and reporting purposes);
- increasing the expectation for expediency in reporting diseases that are particularly significant; and
- having a role in disease control outside of national and regional pest and pathway management plans.

124. It is an offence to not report the suspected presence of a notifiable organism. The penalties for this offence are high. If convicted, an individual may be liable for imprisoned for a term not exceeding five years and/or a fine of up to \$100,000 for an individual, or \$200,000 for a corporation.

## 5.2. Problem or opportunity

125. The tools for the management, surveillance and monitoring of unwanted and notifiable organisms under the Act have not been examined for a considerable amount of time. MPI's scientific and technical experts have identified issues with the Act that could improve the management of unwanted and notifiable organisms which have not been reflected in the Act.
126. Of the 15,000 listed in the unwanted organisms register, a number may no longer meet the criteria for an unwanted organism. The significant number of unwanted organisms makes the register difficult to manage and can impact how easy it is to use.
127. Additionally, the Act does not clarify how unwanted organism status can be removed from an organism. For something to be an unwanted organism, a Chief Technical Officer only needs to believe the organism is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health. The effect of this is that the bar for removing the unwanted status of an organism is high (as the bar for something to be an unwanted organism is low).
128. Section 52 relates to the communication of a pest or unwanted organism. There is uncertainty and confusion from regulated parties about the meaning of "communicate". The meaning of the term has been interpreted very broadly (moving a single specimen of the organism from one place to another) or very narrowly (transmitting a disease from one organism to another). It is important that this is clear so that regulated parties understand what they are and are not allowed to do with these organisms.
129. The automatic application of sections 52 and 53 when an organism is declared as unwanted may criminalise a broad range of legitimate activity. This then requires MPI to consider exemptions which take time to design and approve. MPI often needs to move quickly in a response to declare an organism as unwanted to enable the response powers under Part 6. However, there can be delays in this declaration if there are concerns that the application of sections 52 and 53 will inappropriately criminalise legitimate behaviours, or the declaration is delayed while a permitting regime is designed and implemented.

130. As a separate matter, section 53(2) of the Act includes a wide range of permissions for exemptions to sell, exhibit, propagate or multiply a pest or an unwanted organism when compared with the exemptions contained in section 52 of the Act. Under section 53(2) the owner or person in charge of a pest or unwanted organism must apply for permission for an exemption to a chief technical officer. Section 52 provides for a person or owner to communicate, release or otherwise spread any pest or unwanted organism in situations specified under that section of the Act (e.g., in accordance with a NPMP or emergency biosecurity regulations), without the requirement to apply to a chief technical officer for an exemption. Aligning the permissions for exemptions contained in section 53(2) with the exemptions in section 52 will assist in making the application of sections 52 and 53 more appropriate for the specific organism concerned. In particular, section 52 provides an exception where activity is carried out in the course of and in accordance with a NPMP or RPMP. Providing the same exemptions in section 53 will help ensure the restrictions in section 52 are not too broad.
131. The functions of notifiable organisms differ from unwanted organisms. In some cases, an organism might be declared a notifiable organism for World Organisation for Animal Health surveillance requirements, but the organism would not be considered an unwanted organism as biosecurity control measures would be unlikely to be put in place if the disease was detected.
132. Further, the process for declaring a notifiable organism can take considerable time and resource to develop. This process is not responsive enough to address emerging biosecurity risks, such as new organisms entering New Zealand that may require notifiable organism status.

### 5.3. Options

133. **Option 1** is the **status quo**. No changes would be made to the provisions under the Act for the management, monitoring and surveillance of unwanted and notifiable organisms.
134. **Option 2** would **amend section 52 to define “communicate” in relation to a pest or unwanted organism**. The amendment would aim to reduce the uncertainty as to the meaning and scope of the term “communicate” and “cause to be communicated.” This will decrease the ambiguity of complying with section 52 and help prevent unintended breaches of the provision.
135. The definition could be narrowed, as the rest of section 52 adequately captures the activities that the section needs to contemplate (by use of the terms “release, or cause to be released, or otherwise spread”). It may be difficult to argue that moving a single organism in a way that has no risk of transmitting a disease could potentially attract the highest criminal penalty available in the Act.
136. **Option 3** would **enable a Chief Technical Officer to tailor the application of sections 52 and 53 when declaring an unwanted organism**. The purpose of Chief Technical Officers making decisions during a biosecurity response is to ensure the quick delivery of decisions and technical advice. Option 3 would enable this decision-making process to be more efficient and adaptable during the initial stages of a biosecurity response.

137. If the Chief Technical Officer wishes to designate an organism as unwanted and that sections 52 and 53 are not appropriate for the organism (e.g. because the restrictions are too broad and there is insufficient time to determine appropriate exemptions during the initial stage of a biosecurity response) the following process could be used:
- A Chief Technical Officer designates an organism as “unwanted” and at the same time determines which elements (if any) of sections 52 and 53 would not apply.
  - The powers under Part 6 of the Act become available and sections 52 and 53 operate as modified.
  - The Chief Technical Officer communicates their decision via stakeholder engagement and/or MPI’s website.
  - The unwanted organism is added to the statutory register to record the decision to remove the application of elements of sections 52 and/or 53 in accordance with section 164C(2).
  - Appropriate exemptions are designed (if required).
138. A Chief Technical Officer may make a decision to ‘re-apply’ sections 52 and 53. If this decision was made, the duties and restrictions would apply to the unwanted organism, the Chief Technical officer then:
- communicates their decision via stakeholder engagement and and/or MPI’s website; and
  - the statutory register is updated with the decision.
139. **Option 4 would align the permissions for exemptions contained in section 53(2) with the exemptions provided in section 52.** This makes the application of section 53 exemptions more appropriate for the specific organism concerned, to ensure that the application is not too broad. Section 53(2) of the Act includes a wider range of permissions for exemptions to the restrictions than those contained in section 52. Section 52 requires an application for permission for an exemption from a Chief Technical Officer if a person or group wishes to communicate a pest or unwanted organism (e.g., transferring a pest such as a wallaby to another location). If the exemptions in section 53(2) are aligned with section 52, applications to a Chief Technical Officer for permission to sell, exhibit, multiply or propagate a pest or unwanted organism would not be required if the activity is being carried out:
- in the course of and in accordance with a NPMP or RPMP or small-scale management programme;.
  - in relation to a biosecurity emergency regulation made under section 150 of the Act; or
  - for a scientific purpose carried out with the authority of the Minister.
140. **Option 5 would clarifying in the Biosecurity Act how unwanted organism status can be removed and making this process more efficient.** Option 5 would include new provisions in the Act that clarify the process for removing unwanted organism status from an organism. When determining whether an organism should be unwanted, a Chief Technical Officer must determine if the organism has the potential to cause harm. The unwanted status could be removed where the harm caused by an organism no longer warrants the use of relevant powers under the Act.

141. The process for removing unwanted status would involve the following:
- A Chief Technical Officer determining that it is no longer appropriate for the provisions of the Act to apply to the unwanted organism.
  - A Chief Technical Officer may issue a notice in the New Zealand Gazette or any other notification that the Chief Technical Officer considers appropriate (i.e., notification on MPI's website), in declaring that an organism is no longer an unwanted organism under the Act.
  - The Chief Technical Officer will amend the organism's status on the register of unwanted organisms in accordance with 164C(2) (Registration on unwanted organisms).
142. In the process for removing the unwanted organism status for an organism, a Chief Technical Officer would have the opportunity to consult with regional councils, management agencies, central government agencies and iwi. For efficiency and expediency, it is proposed that this would be an operational decision by MPI and considered on a case-by-case basis rather than a legislative requirement. For example, MPI would consult with the Environmental Protection Authority, as its decisions to decline the import of an organism automatically deems that organism as an unwanted organism (which is expressly stated in section 2 of the Biosecurity Act).
143. **Option 6** would deliver a **new transitional provision for all unwanted organisms to expire after five years**. Under this option, all current unwanted organisms would cease to be unwanted organisms from five years after the Royal Assent of the Biosecurity Act Amendment Bill. The transitional provision would be a one-off occurrence only and would assist in reducing the number unwanted organisms contained in the Official New Zealand Pest Register that may no longer require unwanted organism status.
144. There would be no legislative requirement for further analysis to retain the unwanted organism status of organisms. A Chief Technical Officer may choose a substantial analytical process or could simply confirm that they were still of the view that unwanted organism status was appropriate.
145. The five-year period, and provision to delist from a future date, would ensure that the transition can be well signalled and planned.
146. The options during this transitional period for Chief Technical Officers would be:

**Table 2 – Options for unwanted organism status during the transitional period**

Possible actions for an organism during the transition period	Effect
No action.	Organism ceases to be a UO from five years after Royal Assent
Confirm that an organism should remain a UO.	Organism continues to be a UO with no time limit.
Decide that an organism that is currently a UO will cease to be a UO from a date no more than 12 months in the future.	Organism UO status expires at the time stated by the CTO.
Decide that an organism will cease to be a UO.	Organism UO status expires from the time of the CTO's decision.

147. Organisms newly declared to be UOs during the five-year transition period would not be subject to the transitional provisions (that is, they would remain UOs in perpetuity unless subject to a subsequent CTO decision that they should be delisted).
148. **Option 7** would deliver amendments to **improve the management of notifiable organisms**. Option 7 would include new provisions in the Act to improve the management of notifiable organisms that:
- clarifies that notifiable organisms are a separate classification from unwanted organisms; and
  - amends the Act to enable a Chief Technical Officer to make a decision on whether an organism is to be declared a notifiable organism, and remove the need for an Order-in-Council to be able to declare a notifiable organism. This would enable more efficient and timely updates to the schedule of notifiable organisms under the Act, as it would not require an Order-in-Council and the associated Cabinet processes. Moreover, an unwanted organism can be designated by a Chief Technical Officer. This aligns the designation of a notifiable organism with the designation of unwanted organisms.

## 5.4. Assessment

149. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?  How complex is the option to implement?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

150. Option 1, the status quo, would not address the issues identified in the problem definition. While the Act is, overall, functioning well, there is an opportunity to improve the management of unwanted and notifiable organisms. Option 1, maintaining the current system for managing unwanted and notifiable organisms, would not meet the criteria.
151. Option 2 (defining communicate in relation to pest or unwanted organism) meets all of the criteria. Defining the term “communicate” will provide much more certainty about the scope of section 52 which will decrease the costs of complying with the section and help prevent unintended breaches of this section of the Act. This may benefit those who may potentially move a pest or unwanted organism (such as regional councils and management agencies). Option 2 would modernise the language in the Act to improve the clarity of section 52 of the Act. Users of the Act would have a better understanding on if the duties and restrictions of section 52 apply. It may also decrease the costs of complying with section 52 and assist in preventing unintended breaches of section 52.

152. Option 3 (tailoring the application of sections 52 and 53 for unwanted organisms) meets all the criteria. Providing a more tailored application of sections 52 and 53 will enable these sections to be applied in a way that is appropriate for an unwanted organism. This option will assist Chief Technical Officer being able to move at speed during a biosecurity response by determining if the duties and restriction of sections 52 and 53 when an organism is designated as an unwanted organism. Currently there may be delays in this declaration if there are concerns that the automatic application of sections 52 and 53 will inappropriately criminalise some behaviours. While exemptions can fix this problem, they take time to design and approve. This option would also reduce the administrative burden of processing permissions for exemptions from the duties and restrictions of section 52 and 53.
153. Option 4 (aligning the exemptions provided in section 53(2) with the exemptions provided in section 52) ensures that the restrictions contained in section 53 are not too broad. This will result in an application to a chief technical officer for a permission for an exemption under section 53 for the same activities that have an exemption under section 52. This is effective as it will assist in making the application of permissions more appropriate for the specific organism concerned, which is better for biosecurity outcomes. Option 4 is efficient because it would make it clear that the same permissions for exemptions would be consistent under sections 52 and 53(2) of the Act. Relatively minor matters would not require a permission for an exemption from a Chief Technical Officer, which would provide efficiencies under the Act. Option 4 would make what exemptions could be provided clearer and more transparent.
154. Option 5 (clarifying the removal of unwanted organism status) meets three of the criteria (adaptable, efficient and clarity). The benefits of this option is that it would be made easier and more efficient to remove unwanted organism status. Clarifying the process of when unwanted organism status would be removed and making it an efficient process would assist in reducing the number of unwanted organisms that may not require this status. The threshold for the removal would be where the harm is no longer considered sufficient to be deemed an unwanted organism. This option would provide a pragmatic way to allow for the easier removal of unwanted organism status.
155. Option 6 (including a transitional provision for all unwanted organisms to expire after five years) meets all the criteria and would assist in reducing the number of organisms that are classified as unwanted organisms. As this would be a new transitional provision in the Act, the five-year expiry of all unwanted organisms would only occur once. This mechanism would allow for the rationalisation and consideration of what organisms should be classified unwanted organism. This would assist in providing a more effective way to manage the register of unwanted organisms. Having a refined and focussed register of unwanted organisms would improve coordination, effectiveness and management of these organisms.

156. Option 6 would provide a more modern and effective register of unwanted organisms. A more considered approach of classifying unwanted organisms would futureproof the unwanted organisms register. Option 5 would reduce the administrative burden through improving rationalisation of unwanted organism status. The size of the unwanted organisms register has meant that there are organisms included in the register that may no longer require unwanted organism status. The implementation of will require planning and coordination from MPI and for others who have an interest in unwanted organism status such as the Department of Conservation, the Environmental Protection Authority and regional councils. However, the five-year expiry date provides sufficient lead-in time for planning.
157. Option 7 (amendments to improve the management of notifiable organisms) meets all the criteria. Having a well-functioning system for notifiable organisms is important in assisting New Zealand's trade and market access by being able to declare freedom from certain pests and diseases. It would also provide benefits to supporting biodiversity and protecting human health. Improvements to the notifiable organisms system will assist New Zealand's international reporting obligations on the presence of certain pests and diseases that may not be considered unwanted organisms. These refinements to notifiable organisms will make it a more efficient and accurate tool through enabling Chief Technical Officers to make more rapid and timely decisions on declaring an organism as notifiable.
158. Option 7 provides significant improvements to the management of notifiable organisms, including and a more efficient process for declaring a notifiable organism. This would reduce the administrative burden and time required to updating the schedule of notifiable organisms through an Order in Council.
159. Option 7 significantly improves clarity. Notifiable organisms will be clarified as separate from unwanted organism status under the Act. There has been uncertainty on whether notifiable organisms are also unwanted organisms. There have also been cases where having notifiable organism status has been necessary for meeting disease freedom requirements, but the restrictions of unwanted organism status have not been required. Determining that notifiable organisms are a separate class of organisms under the Act would assist with this.

## 5.5. Cost benefit analysis

### Option 2, 3, 4, 5 and 7<sup>12</sup>

160. This is not expected to have cost or impacts with fiscal measures. Their consideration and implementation are a part of the regular work of government.
161. We analysed the options using multi-criteria analysis.
162. For Option 7, the penalties for non-notification of a notifiable organism will be adjusted to a lower penalty with the availability of an infringement. As it is a consequential change, its costs and benefits are not further analysed here. Full impact of this change will be analysed if Option 7 is a part of the final amendment package.

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<sup>12</sup> Option 2 would amend section 52 to define "communicate" in relation to a pest or unwanted organism. Option 3 would enable a Chief Technical Officer to tailor the application of sections 52 and 53 for unwanted organisms. Option 4 would clarify the removal of unwanted organism status. Option 6 would deliver amendments to improve the management of notifiable organisms

## Option 6<sup>13</sup>

**Table 3 - Cost benefit impact table for Option 6**

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the option compared to taking no action</b>			
Government	Some additional costs (e.g. for MPI, the Department of Conservation, the Environmental Protection Authority) during the transitional period but we expect such activities would be funded from baselines.	Low	High
Business (importers, industry etc.)	Minimal costs if participating in any consultation during the transitional period.	Low	Low
<b>Total monetised costs</b>		Unknown	Low
<b>Non-monetised costs</b>		None	Low
<b>Additional benefits of the option compared to taking no action</b>			
Government	Greater efficiency in the management of resources. Resources are focused on priority risks.	Medium	Low
Business (importers, industry etc.)	Depending upon final decisions, a business may be able to commence trade in a good that was previously an unwanted organism.	Low	Low
<b>Total monetised benefits</b>		Unknown	Low
<b>Non-monetised benefits</b>		Low	Low

## 5.6. Preferred option

163. Based on our assessment, our preferred option is to progress and all the options for change (Options 2 to 7). Delivering these options as a cohesive package will address all the issues identified in the problem definition and improve the functioning of the management system as a whole for unwanted and notifiable organisms. If only some options were delivered, it is likely that further amendments would be required in the future.

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<sup>13</sup> Option 6 would deliver a transitional provision for all unwanted organisms to expire after five years and transitional powers for Chief Technical Officers to set a time-limit on the unwanted status of an organism.

## 5.7. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

	Option 1 – status quo	Option 2 – defining “communicate” in relation to a pest or unwanted organism	Option 3 – tailoring the application of sections 52 and 53 for unwanted organisms	Option 4 – align the permissions from exemptions under section 53(2) with those contained in section 52	Option 5 – clarifying the removal of unwanted organism status	Option 6 – transitional provision to expire all unwanted organisms after five years and a new power to time-limit the unwanted status	Option 7 – amendments to improve the management of notifiable organisms
<b>Effective</b>	0	+	++	+	0	+	++
		Defining the term “communicate” will reduce uncertainty about the scope of section 52, which will decrease the costs of complying with the section and help prevent unintended breaches of this section of the Act.	Would assist responses by enabling Chief Technical Officers to decide on if any aspects of sections 52 and 53 should apply when an organism is declared unwanted. Could reduce delays if there are concerns that sections 52 and 53 criminalise legitimate behaviours.	This will assist in making the application of permissions more appropriate for the specific organism concerned, which is better for biosecurity outcomes. Aligning section 53(2) with section 52 will result in a permission for an exemption not being required in specific which will make the system for exemptions more effective and broad generalisations would be reduced.	Would not offer significantly greater benefits or incentives for biosecurity protection than the status quo. The option is focussed on improving the processes for managing unwanted organisms.	Would assist in providing a more effective way to manage the unwanted organisms register. A refined and focussed register would improve coordination, effectiveness, and management of these organisms.	This option would support New Zealand’s economy through the ability to claim country freedom from diseases important for trade. Clearer processes for notifiable organisms would improve their management.
<b>Adaptable</b>	0	+	++	0	+	++	+
		Would modernise the language to improve the clarity of section 52 of the Act. Users of the Act would have a better understanding on if the duties and restrictions of section 52 apply.	Would provide a new tool that enables more flexibility on the application of sections 52 to 53 that would provide more timely decisions to be made on an organism during the initial phases of a biosecurity response.	Providing the same exemptions under section 53(2) that are contained in section 52 will ensure that permissions and restrictions under these sections of the Act can be tailored to a situation accordingly and are not overly broad. This will make the system for exemptions more adaptable, but it would not future proof the Act.	Would provide an efficient way for a Chief Technical Officer to remove unwanted organism status. This process would be future proofed through keeping the criteria for removal focussed on whether it is no longer appropriate for the provisions of the Act to apply to an unwanted organism.	Would provide a more modern and effective register of unwanted organisms. A more considered approach of classifying unwanted organisms would future proof the unwanted organisms register.	Would provide significant improvements to the management of notifiable organisms.

	Option 1 – status quo	Option 2 – defining “communicate” in relation to a pest or unwanted organism	Option 3 – tailoring the application of sections 52 and 53 for unwanted organisms	Option 4 – align the permissions from exemptions under section 53(2) with those contained in section 52	Option 5 – clarifying the removal of unwanted organism status	Option 6 – transitional provision to expire all unwanted organisms after five years and a new power to time-limit the unwanted status	Option 7 – amendments to improve the management of notifiable organisms
<b>Efficient</b>	0	+ Would reduce the administrative burden by reducing queries to Biosecurity New Zealand on whether certain activities are regarded as breaches of section 52.	++ Would reduce the administrative burden of processing individual permission applications from exemptions sections 52 and 53 of the Act. This would benefit applicants and MPI.	++ Would provide administrative efficiencies for exemptions under section 53, as applications to chief technical officers would not be required for exemptions would not be required for specific situations. The amendments would make it clear that section 53(2) would have the same exemptions as section 52. Relatively minor matters would not require a permission for an exemption from a chief technical officer.	++ Would provide a tool for clarifying the removal of unwanted organism status in the Act. This would be consistently applied by Chief Technical Officers when considering removing unwanted organism status. This would be able to be implemented as part of Biosecurity New Zealand’s existing processes for removing this status.	++ The size of register has made it an inefficient tool that is not well used. Option 5 would reduce administrative burden through improved rationalisation of unwanted organisms. There are organisms included in the register that may no longer require unwanted status. Implementation will require planning and coordination from MPI and other agencies. However, the five-year expiry date provides time for planning.	++ The process for declaring an organism as notifiable takes significant time. Enabling a Chief Technical Officer to make a decision on whether an organism is to be declared a notifiable organism would enable more efficient and timely updates to the schedule of notifiable organisms under the Act and reduces administrative burden.
<b>Clarity</b>	0	++ Would reduce the uncertainty that has arisen on the meaning and scope of the term “communicate.”	- Would improve clarity on the legitimate activities that the public, industry and local government are allowed to undertake without potentially breaching sections 52 and 53. The application of sections 52 and 53 would be communicated with stakeholders and on MPI’s website. However, Option 3 does create a much more complex system where different rules apply to different unwanted organisms.	+ Would improve the understanding of what exemptions could be provided under sections 53(2) of the Act. Currently the wording of section 52(3) could be interpreted very broadly by chief technical officers and other users of the Act.	++ Would clarify the removal of unwanted organism status under the Act. The threshold for removing unwanted organism status has been very high, which has resulted in few organisms having unwanted organism status removed over time.	+ Would provide clarity on the status of unwanted organisms and consideration of those organisms that require unwanted organism status. It would provide a logical and consistent way of redetermining those organisms that require unwanted organism status.	++ There have been cases where notifiable organism status has been necessary for meeting disease freedom requirements, but the restrictions of unwanted organism status have not been required. Option 7 clarifies that notifiable organism status is distinct from unwanted organism status.
<b>Overall rating</b>	0	+ Improving the clarity of section 52 and the use of the term “communicate” will assist in the section being better understood by the public, participants in the long-term management system, and will reduce the volume of queries associated with the term “communicate.”	++ Enabling sections 52 and 53 to be tailored or ‘de-coupled’ when an organism is designated as an unwanted organism would provide a more efficient approach to making decisions on the application of these sections of the Act and better supports responses.	+ Aligning the permissions for exemptions under sections 53(2) with section 52 would enable a consistent approach for having general exemptions for unwanted organisms in situations specified under section 52(a) – (d) of the Act. This would provide clarity for users of the Act who have duties and obligations for unwanted organisms, would reduce the risk of providing broad exemptions and would reduce the administrative burden associated with applications to chief technical officers for situations that pose a relatively low risk.	++ Setting out the process for removing unwanted organism status in the Act would clarify and standardise the process and for removing unwanted organism status.	++ Would address issues with the unwanted organisms register that have been causing inefficiencies.	++ The processes and uncertainty with notifiable organisms have reduced its effectiveness as a tool. Making the process of declaring an organism notifiable more efficient and clarifying it as a distinct category from unwanted organisms would provide significant benefits.

## 6. Definitions related to unauthorised goods

### 6.1. Background

164. The Act sets out the definition for unauthorised goods (section 2). Generally, it covers goods that are at the border, but do not meet the requirements/conditions/regulations required to receive clearance, and goods that have entered New Zealand without being biosecurity clearance.
165. Unauthorised goods may be subject to enforcement action under section 1540(9) of the Biosecurity Act.

### 6.2. Problem or opportunity

166. There are a number of definitions across in the Biosecurity Act where certain activities relating to unauthorised goods are seemingly not captured by the legislation. These include:
- the lack of a definition for ‘New Zealand-born progeny’; and
  - the definition of ‘goods’ excluding planted trees or plants.

#### Lack of definition for progeny

167. The definition of unauthorised goods in the Biosecurity Act does not extend to the New Zealand-born progeny of those unauthorised goods. In a number of cases, it is challenging to distinguish the unauthorised good from its progeny.
168. MPI has limited powers to deal with New Zealand-born progeny of illegally imported organisms (i.e. unauthorised goods). The Biosecurity Act’s powers are limited to the following circumstances:
- if it can be established that the progeny had come into contact with unauthorised goods, and pests or unwanted organisms could have been transmitted from the unauthorised goods to the progeny;
  - the progeny is an unwanted organism or pest under the Biosecurity Act; and/or
  - the progeny is known or suspected to harbour or contain an unwanted organism or pest under the Biosecurity Act.
169. The gaps in legislation relating to the New Zealand-born progeny of unauthorised goods is a well identified issue without operational solutions to improve the situation, pending regulatory changes.

#### Definition of goods excluding trees or plants

170. The Biosecurity Act defines “goods” to mean all kinds of moveable personal property. Generally, in property law, planted trees or plants are considered to be part of the land and not moveable personal property. Uncleared goods that are plants may no longer be considered goods if they are planted. This scenario is fact specific, and a Courts’ decision about whether something would meet the definition of “goods” is context specific.

171. Plants for planting are a high-risk import pathway if biosecurity risk is not managed effectively. If New Zealand-born progeny cannot be sufficiently captured within the legislation, and they are able to be further propagated, moved and planted, the risk is that pests and diseases could spread. An incursion of plant-related pests and diseases could have significant negative consequences for New Zealand's primary industries.
172. This is also problematic from a credibility perspective, especially where it is clear the New Zealand-born progeny is offspring of/from goods that were clearly imported illegally, but there is no immediate biosecurity risk (i.e., unlikely unwanted organisms could have transmitted from the illegally imported good to the progeny). It may unintentionally encourage a person to unlawfully import species, in the hope that the New Zealand-born progeny could be lawful. This behaviour could be seen as a biosecurity risk.

### 6.3. Options

173. We have considered are several amendments to definitions within the Biosecurity Act that could be made. These amendments are:
- **Amendment 1 - provide a definition for 'New Zealand-born progeny' in section 2 of the Biosecurity Act.**<sup>14</sup> This definition would specify that 'New Zealand-born progeny' refers to an organism's offspring or descendant that is born within New Zealand;
  - **Amendment 2 - would amend definition of "goods" in section 2 of the Biosecurity Act to include planted trees or plants alongside moveable personal property;** and
  - **Amendment 3** involves two mutually exclusive amendments:
    - **Amendment 3A - amends the definition of "risk goods" in section 2 of the Biosecurity Act to include the New Zealand-born progeny of unauthorised goods** (and therefore have the corresponding requirements and powers available to manage it); or
    - **Amendment 3B - amends the definition of "unauthorised goods" to include the New Zealand-born progeny of unauthorised goods** (and therefore have the corresponding requirements and powers available to manage it).
174. **Option 1** is the **status quo**. There would be no change. Certain activities relating to unauthorised goods would continue to be unclear on whether they were captured by the Biosecurity Act.
175. **Option 2** would **progress Amendments 1, 2 and 3A**.
176. **Option 3** would **progress Amendments 1, 2 and 3B**.
177. The key difference between Option 2 and Option 3 is how the New Zealand-born progeny of unauthorised goods is defined in the Biosecurity Act.

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<sup>14</sup> Section 2 is the Interpretation section of the Biosecurity Act which sets out the definition of key terms used in the Biosecurity Act.

## 6.4. Assessment

178. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

179. If the status quo is maintained, New Zealand-born progeny of unauthorised goods will continue to be a significant grey area that is not captured by the Biosecurity Act. This will hinder MPI's ability to manage the biosecurity risks posed by these organisms.
180. Both Options 2 and 3 will address issues related to the scope of the definition for 'goods' which addresses issues to do with planted trees or plants. This supports greater protection from biosecurity risk by capturing current grey areas within the legislation, enabling biosecurity incursion officers to respond to and deal with biosecurity risks. These options also improve operational effectiveness by providing certainty and enabling enforcement activities.
181. We may not wish to amend the law to address the grey areas if this will have unworkable interfaces with property law, or that enforcing such provisions may trigger the requirement for MPI to provide compensation for damages to property.<sup>15</sup> Progressing amendments for a niche scenario may not be enduring. However, MPI has only been able to address this issue if the individual possessing the good voluntarily surrenders it. In cases where voluntary compliance is not agreed, MPI cannot currently act to mitigate the biosecurity risks until they have spread further and there is an incursion issue. On balance, addressing the grey area is preferred.
182. Both Options 2 and 3 will also define 'New Zealand-born progeny'. The options differ in how New Zealand-born progeny is then regulated. Option 3 is likely to provide better clarity and efficiency than Option 2 as it treats New Zealand-born progeny of 'unauthorised goods' as 'unauthorised goods'. This is because the progeny is treated the same as the parent organism, which reduces the effort required to identify the progeny's legal status. Whereas Option 2 would provide the progeny with the different status of 'risk goods'.

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<sup>15</sup> Section 162A of the Biosecurity Act requires MPI to compensate people for losses caused by the exercise of powers under the Biosecurity Act. Paper 3: Funding and compensation contains further discussion about the compensation provisions.

183. In instances where it can be difficult to differentiate between New Zealand-born progeny and the original unauthorised goods, having all organisms treated the same under the provisions of the Biosecurity Act will reduce confusion, and reduce the likelihood of MPI acting upon an organism unlawfully. This is because in some circumstances the original imported organism could be indistinguishable from its progeny (e.g. a clone). If the original is to be treated as one thing, but the progeny another, MPI may apply the wrong provisions to the organism, which may mean that MPI would be acting outside of the powers of the Act.

## **6.5. Cost benefit analysis**

184. This set of proposals is not expected to have cost or impacts with fiscal measures. Their consideration and implementation are a part of the regular work of government.

185. We analysed the options using multi-criteria analysis.

## **6.6. Preferred option**

186. Our preferred option is Option 3 because it provides the most clear and efficient definitions compared to the status quo.

## 6.7. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

	Option 1 - status quo	Option 2 – progress Amendment 1, 2, and 3A	Option 3 – progress Amendment 1, 2, and 3B
<b>Effective</b>	0	+ Would support greater protection from biosecurity risk by capturing grey areas within the legislation, enabling biosecurity incursion officers to respond to and deal with biosecurity risks.	++ Would support even greater outcomes than Option 2 by capturing all grey areas within the legislation, enabling MPI to respond to and deal with biosecurity risks.
<b>Adaptable</b>	0	+ Provides MPI with a better toolbox to deal with the illegal importation and propagation of unauthorised/uncleared organisms.	+ Similar to Option 2.
<b>Efficient</b>	0	+ Improves operational effectiveness by providing certainty and enabling enforcement activities. However, some definition changes may open MPI up to compensation liabilities in the future.	+ Similar to Option 2.
<b>Clarity</b>	0	+ Would clarify that New Zealand-born progeny is within the scope of the Biosecurity Act, explicitly bringing these grey areas within the Act. However, Proposal 3a may not be clear in how to deal with the New Zealand-born progeny of unauthorised goods.	++ Would clarify that New Zealand-born progeny is within the scope of the Biosecurity Act, explicitly addressing grey areas in the Act. This would provide explicit powers for incursion and surveillance, and enforcement officers.
<b>Overall rating</b>	0	+ The main advantages of this option are the clarity that it will provide, and the ability to capture progeny and planted trees or plants within the legislation.	++ This option will provide greater clarity than Option 2 and captures all grey areas within the legislation leading to better biosecurity and a more fit-for-purpose legislative toolbox.