

**Regulatory Impact Statement**

# **Biosecurity Act Amendment Bill**

Paper 7: Surveillance and  
interfaces with Department of  
Conservation-administered  
legislation

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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 7: Surveillance and interfaces with Department of Conservation-administered legislation. It addresses how the Act interacts with the:
  - the Freshwater Fisheries Regulations 1983 (regulations under the Conservation Act 1957);
  - the Marine Mammals Protection Act 1978; and
  - the Wild Animal Control Act 1977.
4. New Zealand’s biosecurity system interacts with these other legislative frameworks and regulatory systems. Each of these systems is administered by different pieces of legislation, which need to align and work together to achieve the desired objectives and outcomes. If the Biosecurity Act does not align with other legislation there could be:
  - unnecessary duplication of activities, functions, or powers;
  - unclear legal obligations or responsibilities;
  - gaps that may lead to some matters not being appropriately regulated; and
  - unnecessary complexity or inefficiencies.
5. 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.

## 2. Interaction with the Freshwater Fisheries Regulations 1983

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### 2.1. Background

#### The Freshwater Fisheries Regulations 1983 and the Conservation Act 1987

6. The Freshwater Fisheries Regulations cover the management and conservation of fisheries and fishery resources. They were made under the Fisheries Act 1983 but are now deemed to have been made under the Conservation Act.<sup>1</sup>
7. The Conservation Act promotes the conservation of New Zealand's natural and historic resources. It specifies the functions of New Zealand Fish and Game Councils, which are to manage, maintain, and enhance the sports fish resources. Taking sports fish from any freshwater at any time without a licence is an offence under the Conservation Act.
8. Sports fish are defined under the Conservation Act as every species of freshwater fish that is declared as such by Order in Council.
9. Under the Conservation Act and the Freshwater Fisheries Regulations, the Minister responsible for sports fishing may designate a fish species as a sports fish. This enables implementing rules and restrictions designed to improve the stock of the specified sports fish and the sport fishing benefits it may provide. Species of fish that have been defined as a sports fish in New Zealand are listed in Schedule 1 of the Freshwater Fisheries Regulations.

#### Legislative interaction with the Biosecurity Act

10. The Biosecurity Act provides for the management of pest fish that present a threat to New Zealand's marine ecosystem and aquatic industries. Fish may be designated as a pest fish if the species is capable of having an adverse effect on such things as threatened species, indigenous plants, water quality, and Māori cultural values. The most common type of fish that are designated as pest fish in New Zealand are Koi carp, Brown Bullhead catfish, and perch. These fish are predatory and out-compete New Zealand native fish and freshwater invertebrates. Often, the feeding habits of these fish also have serious impacts on water quality.
11. When developing regional pest management plans, regional councils may designate a fish as a pest fish and set rules for the management of the pest fish. Rules can include the prohibition or limitation of release, breeding, sale, or fishing of designated pest fish.
12. Under the Freshwater Fisheries Regulations, regional councils need to apply for a special licence from Fish and Game Councils (which must be authorised by the Minister responsible for sports fishing) to undertake their pest control activities relating to the pest/sports fish.

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<sup>1</sup> The regulations were originally made under the Fisheries Act but were deemed to be made under the Conservation Act by section 39 of the Conservation Law Reform Act 1990.

## 2.2. Problem or opportunity

13. Section 7(2) of the Biosecurity Act states that the Biosecurity Act must not be used to affect the provisions of the Conservation Act. This means the provisions of the Conservation Act take precedence over the Biosecurity Act. Effectively, if a rule in a regional pest management plan is inconsistent with the Freshwater Fisheries Regulations, Freshwater Fisheries Regulations prevail.
14. There are instances where fish are designated as both a pest fish and a sport fish. For example, perch and tench are considered pest fish, but are also identified as sports fish under the Freshwater Fisheries Regulations. When this occurs, the regional council must have the requisite licence from the relevant Fish and Game Council to be able to include that fish as part of the settings in their regional pest management plans.
15. This is not easily achieved in some cases, as biosecurity benefits and sports fish benefits may not align. This hampers regional councils' ability to use the Biosecurity Act to undertake pest management activities and puts the environment at risk.

## 2.3. Options

16. There are four options for addressing the problematic interface between the Biosecurity Act and the Freshwater Fisheries Regulations.
17. **Option 1** is the **status quo**. Under this option some fish species may be designated a pest under the Biosecurity Act, while also designated as a sports fish under the Conservation Act and the Freshwater Fisheries Regulations. In these instances, the Freshwater Fisheries Regulations regulation prevail.
18. **Option 2** seeks to **enable the Biosecurity Act to take precedence over sports fishing benefits**. This option amends the Biosecurity Act to take precedence over the relevant sports fishing provisions in the Conservation Act and its Freshwater Fisheries Regulations in instances where biosecurity objectives and sports fishing priorities do not align. The Biosecurity Act would require that the following conditions would need to be met for the precedence to take effect:
  - it cannot be shown that the fish was legally introduced;
  - the fish is causing harm to the environment/amenity/recreation/cultural/economic values; or
  - the fish management is part of an ecological restoration programme.
19. Regional councils will still be required to consult under section 92 of the Act, and consultation with Fish and Game councils and the Minister for Conservation and the Minister responsible for sports fishing would likely be appropriate under section 72. This consultation requirement provides an opportunity for the benefits of sport fishing to be taken into consideration, and while still ensuring the biosecurity risks and concerns outweigh sport fishing benefits in instances where the two do not align. It also ensures that regional councils decision making remains transparent and accountable.

20. **Option 3** seeks to **enable the Biosecurity Act to take precedence over sports fishing benefits following agreement from a Chief Technical Officer** if the proposed pest fish has already been designated as a sport fish. Under this option section 71 of the Biosecurity Act would be amended to require regional councils to seek agreement from a Chief Technical Officer when designating pest fish in their regional pest management plan, if that fish is also a sports fish.
21. During previous consultation on Option 3, the Department of Conservation raised that any exemptions in section 7 of the Biosecurity Act, including this proposed exemption, should include a condition requiring approval from the Minister of Conservation if the biosecurity power, functions, or duties will be exercised on or within conservation land.
22. However, this proposed condition may cause delays in national-level responses, which are often time-critical and already involve consultation with the Department of Conservation. Therefore, we propose that this condition should only apply to regional council's biosecurity activities on pests managed under their regional pest management plans, and not during biosecurity responses undertaken by MPI.
23. **Option 4** seeks to **enable biosecurity powers, functions or duties to take precedence over other provisions where a fish is also an unwanted organism**. This option involves creating a new subsection to section 7 of the Biosecurity Act to create an exemption where biosecurity power, functions, or duties relating to unwanted organisms designated by a Chief Technical Officer would take precedence over the requirements of Part 5B of the Conservation Act and associated regulations.
24. **Option 5** seeks to amend the Biosecurity Act to **require Ministerial decision-making if a regional council and Fish and Game Council do not agree**. Under this option, the Biosecurity Act would be amended to specify that agreement from Fish and Game is required for a regional council to include a sports fish in their regional pest management plan. If this was agreed, then the Biosecurity Act would take precedence for the management of that sports fish.
25. If the regional council and Fish and Game Council cannot agree on whether to include a sports fish species in a regional pest management plan, then the regional council could request a decision from the Minister responsible for sports fishing. Under this option the Biosecurity Act would be amended to include decision making criteria that reflected biosecurity objectives, as well as broader sports fishing and conservation interests.
26. If the Minister agreed to the inclusion of the sports fish species in the regional pest management plan, then the Biosecurity Act would take precedence for the management of that sports fish.

## 2.4. Assessment

27. 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>	<p>How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?</p> <p>How complex is the option to implement?</p>
<b>Clarity</b>	<p>Is the option logical, consistent, easy to understand, and provides sufficient certainty?</p> <p>Are roles and responsibilities assigned appropriately and clearly between central government, local government, industry, and local communities?</p>

28. Under the status quo, in instances where a fish is designated as both a pest and sports fish the system requires cooperation and agreement between the relevant regional and Fish and Game councils. Regional councils must have the support of the correlating Fish and Game council on the designation of pest fish in the region, and the rule settings in their regional pest management plans. This cooperation is not easily achieved in some cases.
29. Option 2 (enable the Biosecurity Act to take precedence over sport fishing benefits, in relation to regional councils managing sports fish as pests) meets all the criteria. Option 2 supports the effective criterion as the Act would recognise that biosecurity needs outweigh sports fishing interests, leading to better pest management outcomes. Option 2 modernises the Act by improving regional council's autonomy to designate pests and undertake their individual biosecurity activities and objectives. Option 2 is more efficient as regional councils would be able to designate pest fish and undertake pest management activities to achieve biosecurity objectives without additional consultation requirements.
30. Option 3 (enable the Biosecurity Act to take precedence over sport fishing benefits in relation to regional councils managing sports fish as pests, with a condition that the regional council must seek the agreement of a Chief Technical Officer) meets some of the criteria. Option 3 better protects biosecurity by allowing for the management of sports fish that have biosecurity risks, while ensuring that biosecurity decisions consider the potential impacts on freshwater sports fishing. However, Option 3 creates an additional consultation requirement for regional councils looking to establish future regional pest management plans. Decision making for this aspect of their regional pest management plans is shifted away from regional councils. This would require regional councils to escalate biosecurity concerns associated with sport fish to a national level. This limits regional councils' autonomy to undertake their pest management duties under their regional pest management plans and may also impact the efficiency of biosecurity and pest management activities where there are time concerns.
31. Option 3 is clear and consistent with other regulatory systems. Both biosecurity objectives and sports fishing benefits would be taken into consideration. This option also ensures that decisions to override sport fish designations are made by a Crown agency (in this case, MPI), addressing any concerns about enabling a secondary statutory authority to override Ministerial authorisation.

32. Option 4 (enable the Biosecurity Act to take precedence over pests or unwanted organisms, in relation to regional councils managing sports fish as pests) meets some of the criteria. Option 4 allows biosecurity needs to outweigh sports fishing benefits, enabling the management of sports fish, where those fish have been identified by a Chief Technical Officer as posing significant biosecurity risk. However, Option 4 goes against the adaptable criterion as it reduces flexibility. Regional councils would be reliant on a fish species already being designated as a pest or unwanted organism before they can undertake pest management activities.
33. Option 4 only allows biosecurity objectives to outweigh sports fishing priorities where a fish has been designated as a pest or unwanted organism by a Chief Technical Officer. This enables regional councils to undertake their pest management functions, while ensuring that biosecurity decisions consider the impacts on freshwater sports fishing and decision making for this remains with a Crown agency.
34. Option 5 (require decision-making from the Minister responsible for sports fish if a regional council and Fish and Game Council do not agree) meets some of the criteria. It provides for Ministerial decision-making, where the decision-making criteria are set out in the Biosecurity Act and reflect biosecurity objectives as well as sports fishing benefits. This may allow for better biosecurity risk management. This also ensures that decision making is transparent and accountable.
35. Option 5 limits regional councils decision-making regarding their biosecurity and pest management activities. It creates a new requirement for an additional decision-making step in the regulatory process. This also reduces the efficiency of the biosecurity system, as the process to obtain a Ministerial decision may take considerable time, and require additional resource from regional councils, as well as central government agencies advising the Minister.
36. Options 2 and 3 somewhat limit regional council's autonomy to undertake their pest management duties and activities under their regional pest management plans and may reduce the efficiency and effectiveness of managing the biosecurity risk posed by a pest/sports fish.

## **2.5. Cost benefit analysis**

37. 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.
38. We analysed the options using multi-criteria analysis.

## **2.6. Preferred option**

39. We do not have a preferred option at this stage. Our assessment shows that Option 2 could lead to the best biosecurity outcomes by enabling biosecurity objectives to take precedence over sports fishing benefits. It also enables regional councils to have greater autonomy over their biosecurity outcomes and pest management activities. However, we acknowledge that this option does not take sports fishing benefits into consideration. We will seek feedback during public consultation on whether sports fishing benefits can better align with desired biosecurity outcomes, as well as feedback on decision making criteria to be included in Option 5.

## 2.7. 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 the Biosecurity Act to take precedence over sports fishing benefits	Option 3 – enable the Biosecurity Act to take precedence over sports fishing benefits following agreement from a CTO	Option 4 – enable biosecurity powers, functions or duties to take precedence over other provisions where a fish is also an unwanted organism	Option 5 – require Ministerial decision-making if a regional council and Fish and Game Council do not agree
<b>Effective</b>	0	++ The Act would recognise that biosecurity needs outweigh sports fishing interests, leading to better pest management outcomes. Regional councils would not be required to take sports fishing priorities into consideration; however, the proposed conditions would mitigate the loss of sports fishing benefits in favour of better biosecurity outcomes.	+ This would allow for the management of sport fish that have biosecurity risks, while ensuring that biosecurity decisions consider the potential impacts on freshwater sports fishing.	+ Allows biosecurity needs to outweigh sports fishing benefits, enabling the management of sports fish, where those fish have been identified by a Chief Technical Officer as posing significant biosecurity risk.	+ This could provide for Ministerial decision-making where the biosecurity objectives must be taken into consideration against sports fishing interests.
<b>Adaptable</b>	0	+ Improves regional council's autonomy to designate pests and undertake their individual biosecurity activities and objectives.	- This would require regional councils to escalate biosecurity concerns associated with sports fish to a national level. This limits regional councils' autonomy to undertake their pest management duties under their regional pest management plans.	- Reduces flexibility, as regional councils are reliant on a fish species already designated as a pest or unwanted organism before undertaking pest management activities.	- This option requires regional councils to escalate biosecurity concerns associated with sports fish to Ministerial level. This limits regional councils' ability to undertake their pest management duties.
<b>Efficient</b>	0	++ Regional councils would be able to designate pest fish and undertake pest management activities to achieve biosecurity objectives without additional consultation requirements.	- Creates an additional consultation requirement for regional councils looking to establish future regional pest management plans. Decision making for this aspect of their regional pest management plans is shifted away from regional councils. This reduces the efficiency of biosecurity and pest management activities where there are time concerns.	- Biosecurity priorities would outweigh sport fishing benefits, only in instances where a fish has already been declared a pest or unwanted organism. If regional councils wished to designate a sports fish as a pest for pest management purposes, then they must wait for designation by a Chief Technical Officer.	- This option creates an additional decision-making requirement if agreement cannot be reached. This reduces the efficiency of biosecurity and pest management activities.
<b>Clarity</b>	0	+ The requirement for regional councils to consult under section 92 of the Biosecurity Act would remain, and consultation with Fish and Game councils and the Minister for Conservation would likely also be appropriate. This would ensure sports fishing benefits are also taken into consideration against biosecurity objectives.	+ Both biosecurity objectives and sports fishing benefits would be taken into consideration. This option also ensures that decisions to override sports fish designations are made by a Crown agency (MPI), addressing any concerns about enabling a secondary statutory authority to override Ministerial authorisation.	+ This option only allows biosecurity objectives to outweigh sports fishing priorities where a fish has been designated as a pest or unwanted organism by a Chief Technical Officer. This enables regional councils to undertake their pest management functions, while ensuring that biosecurity decisions consider the impacts on freshwater sports fishing and decision making for this remains with a Crown agency.	+ Both biosecurity objectives and sports fishing benefits would be taken into consideration. Legislative decision-making criteria would ensure Ministerial decision making is transparent.
<b>Overall rating</b>	0	++ Enables better biosecurity outcomes while retaining regional council's autonomy to manage their regional pest management plans.	+ Supports better biosecurity outcomes while still taking sports fishing benefits into consideration.	+ Supports better biosecurity outcomes for the management of recognised pest species.	+ Supports better biosecurity outcomes while still taking sports fishing benefits into consideration. Decision making is transparent.

## 3. Surveillance and the interaction with the Marine Mammals Protection Act 1978

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### 3.1. Background

40. Surveillance is an integral part of the biosecurity system and protecting New Zealand from biosecurity risks. At MPI, it involves collecting, analysing, and sharing relevant information about risk organisms and the plants and animals they infect.<sup>2</sup> We do surveillance to:
- detect foreign and new pests and diseases early, so we can appropriately eradicate, control or manage them;
  - document national pest and disease occurrence and help with the long-term management of pests and diseases already present in the country;
  - establish a disease-freedom status, which supports the implementation of border controls to prevent the introduction of new disease organisms; and
  - help meet our reporting obligations to organisations such as the World Organisation for Animal Health (WOAH).
41. At MPI, surveillance activities include incursion investigations and cover terrestrial and aquatic environments. Our approaches to surveillance can be general or targeted. General surveillance is employed to keep continuous watch for pests or diseases. It is not limited to a particular pest or disease agent<sup>3</sup> and the wildlife they infect. It involves routine checks and relies on government and public reports of unusual pests and disease events. On the other hand, targeted surveillance is designed to look for specific organisms in a particular host, habitat, or area.
42. Surveillance is critical to biodiversity, wildlife health, and the four biosecurity values (social, cultural, economic, and environmental) that the biosecurity system protects. For example, if Highly Pathogenicity Avian Influenza arrives in New Zealand and is not detected early, it could drastically affect native birds, including taonga species such as kākāpō and takahē. Avian influenza can also be transmitted to humans and has been associated with significant disease events in marine mammals such as seals and sea lions. Highly Pathogenicity Avian Influenza has been classified as both an unwanted organism and notifiable organism<sup>4</sup> in New Zealand.
43. This requires an effective and efficient surveillance system which allows MPI to:
- undertake surveillance activities without delay;
  - efficiently monitor the occurrence of pests and diseases already here in New Zealand;
  - collect comprehensive information and share it (where appropriate) quickly and easily.

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<sup>2</sup> Biosecurity surveillance strategy 2020 - MAF Biosecurity New Zealand (2009).

<sup>3</sup> Disease agents here refer to pathogens, vectors, and organisms that can negatively affect other organisms.

<sup>4</sup> Section 45 of the Biosecurity Act specifies the provisions relating to notifiable organisms.

## Surveillance under Part 4 of the Biosecurity Act

44. Surveillance operates under section 42 (Part 4 of the Biosecurity Act). The purpose of this Part is to provide for the continuous monitoring of New Zealand's status regarding pests and unwanted organisms. It does so to facilitate exports, monitor the outcomes of pest and pathway management plans, enable international reporting obligations, meet trade requirements, and serve as basis for administering the Biosecurity Act.
45. An unwanted organism is defined in the Biosecurity Act as any organism a Chief Technical Officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health. This includes any new organism not approved for importation and prohibited new organisms identified in the Hazardous Substances and New Organisms Act 1996.
46. However, MPI's Chief Technical Officer may choose to not designate a pest or disease as an unwanted organism, even if it could significantly impact wildlife health. The reasons for this include the lack of knowledge or evidence on exotic diseases in the context of New Zealand environment, and where a pest has quickly spread to several locations soon after its first detection, making eradication impractical.

## The Marine Mammals Protection Act 1978 establishes permitting requirements for surveillance activities

47. The Marine Mammals Protection Act 1978 sets rules and procedures to protect and manage marine mammals within New Zealand and New Zealand fisheries waters. When conducting surveillance activities under the Biosecurity Act, MPI must have the relevant permits under the Marine Mammals Protection Act.
48. In comparison, the Biosecurity Act is also subject to the permitting requirements of the Wildlife Act, which is another legislation that DOC administers. However, the Biosecurity Act establishes an exemption from the permitting requirements of the Wildlife Act, allowing MPI to undertake surveillance on unwanted organisms. This exemption is outlined in section 7(6) of the Biosecurity Act.
49. There is not a similar exemption in the Biosecurity Act from needing a Marine Mammals Protection Act permit, even when undertaking surveillance on unwanted organisms. Indeed, the Biosecurity Act does explicitly specify its relationship with the Marine Mammals Protection Act.
50. Additionally, when conducting surveillance in wildlife, MPI generally screens for multiple disease agents to identify the exact cause of disease or wildlife death. This is because it is often challenging to pinpoint the cause of death immediately since different disease agents could elicit similar clinical signs. These disease agents may not be designated as unwanted organisms at the time of surveillance. In this case, MPI would need to obtain an authorisation (i.e., a permit).
51. The Department of Conservation administers the permit application process, which, as we understand, includes:
  - pre-application meeting to help applicants understand the requirements and process;
  - statutory analyses to ensure consistency with relevant legislation;
  - technical assessments to identify potential adverse effects on wildlife and environment, and the measures to avoid, remedy, or mitigate these effects; and

- consultation with relevant iwi, hapū, or whānau to give effect to the principles of Te Tiriti. This includes promoting their interests and supporting them to contribute to decisions about activities that occur within their tribal boundary.
52. Permit processing time varies depending on different factors, such as the nature and scope of the activity or location, and the level of engagement required with iwi, hapū, or whānau. Complex application could take several months to process.

## 3.2. Problem or opportunity

### Surveillance under Part 4 of the Biosecurity Act

53. The current purpose of Part 4 is restricted to pests and unwanted organisms. However, surveillance also involves monitoring certain diseases already present in the country, which are not necessarily classified as unwanted organisms. This presents an inconsistency between what is covered under the current purpose of surveillance in Part 4 (i.e., pests and unwanted organisms) and what MPI's surveillance work encompasses.
54. This inconsistency affects our ability to meet our international reporting obligations. For example, avian chlamydiosis and avian infectious laryngotracheitis are World Organisation for Animal Health-listed diseases.<sup>5</sup> However, both are not classified as unwanted organisms in New Zealand. Therefore, surveillance for these diseases in wildlife is not provided for directly in the current purpose of Part 4. This makes it more difficult to meet our reporting obligations to the World Organisation for Animal Health and establish disease-free status for the purposes of trade.

### Permitting requirements under the Marine Mammals Protection Act

55. The Biosecurity Act does not also explicitly specify its relationship with the Marine Mammals Protection Act. This means that surveillance activities in marine mammals would require a permit from the Department of Conservation, whether these involve unwanted organisms or not.
56. Obtaining permits can take a significant amount of time. This goes against the need to act quickly in detecting exotic pests and diseases. As a successful response is time-dependent, delays in permit application may heighten the risk of harmful organisms to wildlife and taonga species.
57. There are further issues with exemptions being limited to unwanted organisms. Surveillance could involve testing for organisms that are not unwanted organisms. In these cases, MPI would need to apply for permits in many situations, even where unwanted organism surveillance is our primary focus.
58. MPI and the Department of Conservation are continuing to work closely together to ensure that necessary surveillance can occur in a timely way, particularly for the Wildlife Act.

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<sup>5</sup> Listed diseases are diseases, infections, or infestations selected based on the criteria specified in the World Organisation for Animal Health's *Terrestrial Animal Health Code* and *Aquatic Animal Health Code*.

### 3.3. Options

#### Surveillance (Part 4) of the Biosecurity Act

59. **Option 1** is the **status quo**. Under this option, the current purpose of Part 4 would continue to be restricted to pests and unwanted organisms.
60. **Option 2** seeks to **change the purpose of Part 4 by enabling monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm**. This would involve replacing “pests and unwanted organisms” with references to the aforementioned categories of organisms. This would provide a clear legislative mandate to undertake necessary surveillance activities, including for those organisms that are already present in the country but are not classified as unwanted. The intent is that this mandate would be restricted to actions required for the purpose of surveillance under Part 4 of the Biosecurity Act.

#### Permitting requirements under the Marine Mammals Protection Act

61. **Option 1** is the **status quo**. All MPI activities for marine mammals (or marine mammal samples) continue to be subject to the permitting requirements of the Marine Mammals Protection Act.
62. **Options 2** would amend the Act to **include a reference to the Marine Mammals Protection Act in the Biosecurity Act**. This option would extend the exemptions in place for the Wildlife Act to Marine Mammals Protection Act, allowing surveillance for marine mammals involving unwanted organisms without the need for permits. Under this proposal, the provisions of the Marine Mammals Protection Act would not affect the use of Biosecurity Act powers. This would be restricted to when those powers are used with respect to an unwanted organism. This could be worded in a similar way to the Wildlife Act exemptions in section 7(6) of the Biosecurity Act.

### 3.4. Assessment

63. 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?

## Surveillance (Part 4) of the Biosecurity Act

64. Option 2 (change the purpose of Part 4 by enabling monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm) would provide a clear legislative mandate that:
- surveillance covers not only pests and unwanted organisms, but also diseases already present in the country in both domestic animals and wildlife;
  - would foster early detection of diseases and any other organisms that may require monitoring in the future; and
  - would enable surveillance of WOA-listed diseases that are not classified as unwanted in New Zealand.
65. These would enable us to fully comply with international reporting obligations, and also help deliver a modern legislation that is future-proof and enabling. Consequently, this would strengthen surveillance, which is essential in protecting New Zealand from biosecurity risks.
66. However, this option may be perceived as complex because of the long list of categories of organisms proposed to be covered under Part 4 of the Biosecurity Act. In turn, it may be viewed as an unnecessary expansion of the scope of MPI's powers. This could be mitigated by clarifying that the purpose for monitoring pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections and diseases is linked to the outcomes set out in section 42(a) - (d).

## Permitting requirements under Marine Mammals Protection Act

67. Under Option 1 (the status quo), MPI continues to apply for permits to undertake surveillance activities in marine mammals. If non-legislative improvements (e.g., Memorandum of Agreement) is sought, it may necessitate reviews and significant adjustments to the current operational settings and processes within MPI and the Department of Conservation. This itself could impact internal systems in these agencies and could take significant amount of time and resources to undertake.
68. Option 2 (include a reference to the Marine Mammals Protection Act in the Biosecurity Act) would facilitate surveillance in marine mammals with respect to unwanted organisms. This supports protecting New Zealand from biosecurity risks and provides a modern legislation that is enabling surveillance work in marine mammals.
69. This would also align how the Biosecurity Act interacts with the Marine Mammals Protection Act with how the Biosecurity Act interacts with the Wildlife Act, particularly within the context of permitting requirements. Hence, this option is relatively simple to implement as this could simply follow the language used in specifying the relationship between the Biosecurity Act and the Wildlife Act.
70. Explicitly specifying the relationship between the Biosecurity Act and the Marine Mammals Protection Act would provide sufficient certainty and ease the administrative burden associated with permit application for surveillance in marine mammals. In this case, it clarifies that permits would only be necessary to surveillance activities involving non-unwanted organisms.

71. However, this option may involve certain risks that may adversely affect other legislation. For example:
- The Ngāi Tahu Claims Settlement Act 1998 lists six marine mammals as taonga species in Schedule 97. Any changes to the Biosecurity Act would have to acknowledge and provide for the cultural, spiritual, historic, and traditional association of Ngāi Tahu with these taonga species.
  - Section 4 of the Conservation Act provides that the Act must be interpreted and administered to give effect to the principles of the Treaty of Waitangi. Any operational agreements between the Department of Conservation and MPI to further surveillance goals must be negotiated in light of this section.
72. To mitigate these risks, should this proposal proceed, there needs for further detailed discussions with the Department of Conservation, and Māori and Treaty partners, supported as required by formal operational agreements.

### **3.5. Cost benefit analysis**

73. 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.
74. We analysed the options using multi-criteria analysis.

### **3.6. Preferred option**

#### **Surveillance (Part 4) of the Biosecurity Act**

75. We prefer Option 2 as it best supports MPI's surveillance mandate compared with the status quo. This option would provide a clear legislative mandate to undertake necessary surveillance activities. This improves biosecurity protection and helps deliver an enabling and future-proofed legislation.

#### **Permitting requirements under the Marine Mammals Protection Act**

76. We prefer Option 2 as it specifies the relationship between the Marine Mammals Protection Act and the Biosecurity Act and provides for surveillance work in marine mammals in regard to unwanted organisms. This supports protecting New Zealand from biosecurity risks in relation to marine mammals and helps provide a modern, enabling legislation.

## 3.7. Multicriteria analysis

### Surveillance (Part 4) of the Biosecurity Act

	Option 1 – status quo	Option 2 – change the purpose of Part 4 by removing the reference to “pests and unwanted organisms” to enable monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm.
<b>Effective</b>	0	<p style="text-align: center;">+</p> <p>This option provides a clear legislative mandate to do surveillance for a wider set of organisms beyond just pests and unwanted organisms. This enables New Zealand to fully comply with international reporting obligations. This strengthens our surveillance, which is essential in protecting New Zealand from biosecurity risks.</p>
<b>Adaptable</b>	0	<p style="text-align: center;">+</p> <p>This helps deliver a modern legislation that is future-proof and enabling. This is because it would allow for surveillance of diseases and other organisms that may require monitoring in the future.</p>
<b>Efficient</b>	0	<p style="text-align: center;">+</p> <p>This is simple to implement as it only involves changing how the provisions are worded. However, the long list of categories of organisms proposed to be covered in Part 4 of the Biosecurity Act may be perceived as complex and unnecessarily expands the scope of MPI’s powers. This is addressed by clarifying that this amendment is linked to the outcomes set out in section 42 only.</p>
<b>Clarity</b>	0	<p style="text-align: center;">+</p> <p>This option is logical as it addresses inconsistency between what is covered under the current purpose of surveillance in Part 4, and what surveillance encompasses. This is especially true for our need to meet our international reporting obligations.</p>
<b>Overall rating</b>	0	<p style="text-align: center;">+</p> <p>This option would provide a clear legislative mandate to undertake surveillance activities for all pests and diseases. This improves biosecurity protection and helps deliver an enabling and future-proofed legislation.</p>

## Permitting under the Marine Mammals Protection Act

	Option 1 – status quo	Option 2 – include a reference to the Marine Mammals Protection Act in the Biosecurity Act
<b>Effective</b>	0	<p style="text-align: center;">+</p> <p>Provides a clear legislative mandate for surveillance in marine mammals with respect to pests and unwanted organisms. This ultimately supports protecting New Zealand from biosecurity risks in relation to marine mammals.</p>
<b>Adaptable</b>	0	<p style="text-align: center;">+</p> <p>The proposal helps provide a modern legislation that enables surveillance in marine mammals.</p>
<b>Efficient</b>	0	<p style="text-align: center;">+</p> <p>Helps ease the administrative burden associated with permit application for surveillance in marine mammals.</p>
<b>Clarity</b>	0	<p style="text-align: center;">+</p> <p>Provides sufficient certainty surrounding permit applications for surveillance in marine mammals.</p>
<b>Overall rating</b>	0	<p style="text-align: center;">+</p> <p>This option provides a clear legislative mandate for surveillance of marine mammals under the Biosecurity Act. This supports protecting New Zealand from biosecurity risks in relation to marine mammals and helps provide a modern, enabling legislation.</p>

## 4. Interaction with the Wild Animal Control Act 1977

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### 4.1. Background

77. The Biosecurity Act interacts with the Wild Animal Control Act 1977 (the WACA) to allow for the management of “wild animals” if they are a vector for a pest or unwanted organism that is being controlled. “Wild animals” are any deer that is not lawfully kept for farming, tahr, chamois, any goat that is not constrained or identified under the NAIT Act, any pig that is living in a wild state. “Wild animals” also includes any land mammal that has been declared a wild animal by an Order in Council. To date, no other land mammals have been declared a wild animal by an Order in Council.
78. The WACA manages the damaging effects of wild animals and provides for the regulation of recreational and commercial hunters. The WACA is administered by the Department of Conservation.
79. Section 8(2) of the WACA establishes an offence for person to hunt, kill, or possess any wild animal on any land, or to use a firearm on any land, without the landowner’s consent. There are strict penalties for this including up to two years imprisonment, a fine up to \$100,000, or both for an individual, or a fine up to \$200,000 for a corporation.
80. Section 16 of the WACA establishes an exemption for the Department of Conservation (and its agents or contractors) from the offence in section 8(2). This means the Department of Conservation can enter land for the purposes of controlling wild animals. Section 8(2) of the WACA also establishes a similar exemption for Pest Boards acting under section 56 of the Agricultural Pests Destruction Act 1967 (which was the predecessor to the Biosecurity Act).
81. Section 7(5) of the Biosecurity Act allows biosecurity power to take precedence over the WACA on any land (other than land administered under Schedule 1 of the Conservation Act 1987). However, this is only in relation to a pest or unwanted organism that can be transmitted by an animal listed in the WACA. This means regional councils are able to undertake pest management activities on wild animals that are a vector for transmission of a pest or unwanted organism.

### 4.2. Problem or opportunity

82. The exemption in section 8(2) of the WACA allowed Pest Boards acting under section 56 of the Agricultural Pests Destruction Act to enter private land to control wild animals. However, when the Agricultural Pests Destruction Act was repealed by Schedule 3 of the Biosecurity Act, the exemption in section 8(2) of the WACA was not updated.
83. Although regional councils are legal successors of Pest Boards, the revocation of the Agricultural Pests Destruction Act and the omission of updating section 8(2) of the WACA means councils’ exemption under section 8(2) of the WACA is not clear.
84. Without this clarity, if regional councils want to carry out their pest management functions and duties in relation to wild animals, they need the express authority of the owner or occupier of the land they intend to enter. Obtaining landowner or occupier permission to enter land to control wild animals is not efficient or effective because it has not enabled comprehensive operations.

85. An example of this was Northland Regional Council's proposed operations to control sika deer. Feral sika deer are animals to be eradicated in the Northland Regional Pest and Marine Pathway Management Plan 2017-2027. However, some private landowners were not cooperative, potentially because they wished to retain deer for their own hunting purposes.
86. While regional councils can coordinate with the Department of Conservation, this coordination is not always easy, especially in instances where there are different priorities that may lead to delays in pest management. Additionally, while the Department of Conservation's operational teams are unlikely to prosecute regional councils in practice, that the existence of this risk can understandably hinder and disincentive regional council's pest management activities and operations.
87. During policy development, the Department of Conservation also raised that the reference to conservation land in section 7(5) of the Biosecurity Act is not technically correct. Section 7(5) of the Biosecurity Act refers to the Department of Conservation as 'administering' conservation land, when the more technically correct term is 'managing' conservation land.

### 4.3. Options

88. There are three options to address the issues with the interface between the Biosecurity Act and the WACA.
89. These options are not mutually exclusive.
90. **Option 1** is to **retain the status quo**. Under this option, the ability for regional councils to enter private land to undertake pest management activities on wild animals is not clear, unless those animals are a vector for a pest or unwanted organism.
91. **Option 2** is to **clarify that regional councils can enter private land to control wild animals**. This would be done by making a clarifying technical change to section 8(2) of the WACA to replace "*section 56 of the Agricultural Pests Destruction Act 1967*" with "*section 109(1)b of the Biosecurity Act*".
92. As the WACA is administered by the Department of Conservation, this could be achieved through an omnibus Bill as part of the Biosecurity Act Amendment Bill process.
93. **Option 3** is to **make a technical amendment to section 7(5) of the Biosecurity Act to correct the reference to conservation land**, by replacing the phrase "*other than land administered under the Acts listed in Schedule 1 of the Conservation Act 1987*" with the phrase "*other than land held or managed<sup>6</sup> under the Conservation Act 1987 or the Acts listed in Schedule 1 of that Act*".

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<sup>6</sup> This is more accurate as DOC manages land and administers legislation. The Reserves Act 1977 covers land owned and/or managed by regional councils and others.

## 4.4. Assessment

94. 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? Are roles and responsibilities assigned appropriately and clearly between central government, local government, industry, and local communities?

95. Under the status quo, it is not clear whether regional councils are exempted from the offence established in the WACA when they enter private land to undertake pest management activities for wild animals. This can lead to ineffective and inefficient biosecurity outcomes if pest management activities are hindered.
96. Option 2 (clarify that regional councils can enter private land to control wild animals) would lead to more effective biosecurity outcomes, by enabling regional councils to enter private land to undertake pest management activities in line with the objectives of their regional pest or pathway management plans. It would also be more efficient, by removing the administrative burden on regional councils to coordinate with the Department of Conservation to undertake these activities.
97. Option 2 also meets the adaptable and clarity criteria, as it ensures the biosecurity regulatory system is up-to-date and clarifies the exemption for regional councils for wild animals.
98. Option 3 (make a technical amendment to section 7(5) of the Biosecurity Act) seeks to correct the reference to conservation land in section 7(5) of the Biosecurity Act. This would ensure the Act is technically correct and would not have an impact on the effectiveness and efficiency of biosecurity outcomes. However, this option meets the adaptable and clarity criteria, as it ensures the Biosecurity Act is technically correct.

## 4.5. Cost benefit analysis

99. 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.
100. We analysed the options using multi-criteria analysis.

## 4.6. Preferred option

101. Our preferred option is for both Option 2 and Option 3 to be progressed. Both options together improve on the status quo.

## 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 – clarify that regional councils can enter private land to control wild animals	Option 3 – make technical amendment to section 7(5) of the Biosecurity Act to correct the reference to conservation land
<b>Effective</b>	0	+ Clarifying the ability for regional councils to enter private land for pest management purposes under their regional pest or pathway management plans would lead to better biosecurity outcomes, as those pest animals could be more effectively managed.	0 This option seeks to update section 7(5) with a more technically correct reference to conservation land. This would not have an impact on biosecurity outcomes.
<b>Adaptable</b>	0	+ Improves regional council's autonomy to undertake pest management activities and updates the WACA by removing a reference to revoked legislation.	+ This option updates the legislation with a more technically correct term.
<b>Efficient</b>	0	++ The intended exemption for regional councils to enter land to undertake pest management activities would be clarified and the operational pest management activities would be more efficient. Regional councils would better be able to manage wild animals that are pests in a timely manner.	0 This option seeks to update section 7(5) with a more technically correct reference to conservation land. This would not have an impact on biosecurity outcomes.
<b>Clarity</b>	0	+ Will make the law more coherent by addressing references to outdated legislation. This option would clarify the exemption and provide regional councils with greater certainty around their pest management activities on wild animals.	+ This option seeks to update section 7(5) with a more technically correct reference to conservation land.

	<b>Option 1 – status quo</b>	<b>Option 2 – clarify that regional councils can enter private land to control wild animals</b>	<b>Option 3 – make technical amendment to section 7(5) of the Biosecurity Act to correct the reference to conservation land</b>
<b>Overall rating</b>	0	<p style="text-align: center;">+ +</p> <p>Enables better biosecurity outcomes by clarifying an existing exemption under section 8(2) of the WACA when regional councils are undertaking pest management activities on wild animals.</p>	<p style="text-align: center;">+</p> <p>This option ensures the Biosecurity Act is accurate and up-to-date.</p>