BIOSECURITY NEW ZEALAND

Policy for the Biosecurity Amendment Bill

Regulatory Impact Statement

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Ministry of Agriculture and Forestry
Te Manatū Ahuwhenua, Ngāherehere

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Agency Adequacy Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Agriculture and Forestry (MAF). It provides an analysis of options to modernise and enhance the Biosecurity Act 1993 (the Act).

The Act has not been substantively amended for over a decade, and has therefore not kept pace with the changing needs of the biosecurity system. MAF is developing new approaches to biosecurity risk management involving more targeted interventions and increased use of technology and partnerships.

There are some constraints, caveats or uncertainties concerning the analysis in the RIS. Significant time and effort has already been invested in many of the change initiatives proposed in these amendments. Cabinet has recently considered and approved the direction of trans-Tasman passenger work, government-industry agreements, proposals for Farms On Line, and the Joint Border Management System[1] (refer to Existing Policy Mandate pg 9). These initiatives will benefit the biosecurity system, and the sooner the required changes to the Act can be made, the sooner these benefits will be realised.

These separate work streams also create a matrix of dependencies that involve the proposed Biosecurity Amendment Bill. For example, the benefits attributable to the amendments proposed to improve information, use of electronic systems and agency cooperation are partly dependent on the development of the Joint Border Management System (JBMS). If JBMS does not receive funding approval by Government then this constraint on systems implementation would mean that the efficiency benefits would not be realised as planned. The converse is also the case: for the JBMS project to fully realise its benefits the enabling amendments to the Act are necessary.

The following constraints and caveats have been identified:

- The analysis in this RIS does not replicate policy development or RIS analysis that has already been done. This means that this RIS in itself does not fully cover the analysis of the entire amendment suite although the other work is referenced in this RIS (refer Existing Policy Mandate page 5).
- The full cost of binding the Crown for pest management are highly uncertain and will not be properly known until regional pest management strategies (RPMS) are reviewed in several years time – at this time there are broad estimates from DOC and LINZ, but no firm estimates from NZ Defence Force, Department of Corrections and NZ Transport Agency.
- Further work is required on managing the risks to the Crown arising from the effect of binding the Crown and to determine the optimal mechanism(s) for providing national direction to RPMSs.
- There are a number of legal and/or technical changes that are of such a minor nature that these areas have not been explicitly referred to in this RIS.
- At this stage of the legislative and operational analysis, the transitional arrangements that may be necessary for implementation have not been fully assessed. MAF's

[1] JBMS is a computer system that will enable Customs, MAF and industry to share data and processes so that there can be improved risk management and efficiency in border clearance processes. JBMS is under planning consideration at present.

initial appraisal is that few, if any, specific legislative transitional arrangements will be needed.

- Uncertainty around the delivery of technology solutions (e.g. use of electronic systems to share data) may mean that some of the benefits are delayed until operational decisions have been made.
- There has been pressure on timing. The Minister agreed in August 2009 that amendments to the Biosecurity Act should be progressed through an amendment Bill introduced in approximately August 2010. MAF did not consider it would be possible to meet its deadline through a typical public submission process, so a process built around two rounds of stakeholder workshops was adopted. MAF is confident, however, that this has achieved a high level of added value to the policy development process.

Some of the policy options identified in this paper may impose additional costs on business. In the main, the changes proposed to the Act create enabling provisions. As such any implementation of regulations or tertiary instruments will be subject to the usual justification and process requirements to ensure business compliance costs are kept as low as possible.

The policy initiatives for this amendment should not have any other effects (common law, property rights, impact on competition or innovation) such that the government would likely require particularly strong analysis and justification. Furthermore the proposed amendments have been carefully considered in the context of the commitments in the Government Statement on Regulation and this suite of amendments is consistent with the objectives of the Statement.

The option of binding the Crown for pest management is likely to impose additional costs on the government. Ministers have indicated that binding the Crown needs to be subject to adequate risk management.

Douglas Birnie, Director Policy & Risk, MAF Biosecurity New Zealand

[Signature] _____ [Date] _____

Status quo

Biosecurity is the exclusion, eradication or effective management of risks posed by pests and unwanted organisms to the economy, environment and human health. It is critical to New Zealand's prosperity and way of life.

The biosecurity system has been steadily evolving. In 2003 the Government endorsed New Zealand's first national Biosecurity Strategy: *Tiakina Aotearoa* Protect New Zealand. The Strategy notes that New Zealand is facing an increasingly challenging biosecurity environment. Over recent years biosecurity risks have evolved and new biosecurity challenges have emerged. Globalisation and changes in transport technologies have resulted in greater and more rapid trade and the development of new trade routes.

Growth in numbers of travellers to New Zealand has been significant and New Zealanders are travelling more often as well as more widely. New infectious animal diseases, such as avian flu and bovine spongiform encephalopathy (BSE), have emerged. Changing climatic conditions may be making the New Zealand environment increasingly susceptible to invasive organisms. The pace of this change is also quickening, as the world becomes increasingly interlinked.

Along with these changes, there has been expansion in the scope of New Zealand's biosecurity programmes. New Zealand's biosecurity effort was historically directed at protecting land-based primary production – our important agriculture, forestry and horticulture industries – and facilitating international trade in primary products. While the health of these sectors and trade remains a key focus, over recent years there has been increasing recognition of the vital importance of biosecurity to the marine environment, indigenous flora and fauna and human health.

The Biosecurity Strategy found that leadership of the biosecurity system was fragmented, with inconsistent approaches and systems across the various central government agencies involved, poor inter-agency coordination, and no commonly agreed set of priorities and objectives. The response to this included making the Ministry of Agriculture and Forestry (MAF) clearly accountable for the oversight and leadership of the overall management of the biosecurity system, and developing within MAF the necessary systems, structures and capabilities to support its role.

Since MAF Biosecurity New Zealand was created in late 2004, it has been systematically reviewing all aspects of the biosecurity programme, and developing new approaches and systems to meet the challenges of managing biosecurity risks in a changing world. Much of this transformation work is now nearing completion, and implementation of new approaches at the border, in the marine environment, and within New Zealand (post-border)[2] will require amendments to the Biosecurity Act.

[2] The reference to 'border' includes the inspection and management of passengers and cargo at the point of entry into New Zealand. It includes the offshore treatments/processes that may be applied in the country where the imported goods have been sourced. It also includes inspection, treatment and management at transitional facilities and containment facilities.
The reference to 'post-border' includes activities after clearance has been given and the goods are in New Zealand. This also covers incursion response activity and pest management activity.

Context for biosecurity risk management

Trade and tourism are key activities for the New Zealand economy. The changes proposed to the Biosecurity Act should ensure that the supported government outcomes can fully contribute to New Zealand's economic growth and development.

New Zealand relies upon primary production more than any other developed country, exporting around 80% of the primary production produced each year. Using figures to the year ending March 2009, the agricultural and food exports ($19.86 billion), horticultural exports ($3.2 billion) and forestry product exports ($3.4 billion) account for 64% of New Zealand's total merchandise exports. The combined contribution of agriculture, food and beverage, and forestry and logging to New Zealand's Gross Domestic Product (GDP) was 12.5% in the year ending March 2008.

While New Zealand exports the majority of the food it produces, it also imports approximately 19% (by value) of all the food consumed in New Zealand. This illustrates the interdependency within the international trade system – if we want to sell our goods overseas, we must allow our trading partners to sell their goods to us. The New Zealand economy is also dependent on imports of goods not made here – whether it is heavy earth moving machinery from Korea, or semi-durable goods like glassware, cutlery, and apparel from Europe.

The direct and indirect contribution of travel is also significant. As at January 2010 tourism contributed an estimated 9% of New Zealand's GDP. Table 2 shows the projected increase in passenger numbers over the next five years.

Table 2: Commercial Air Passenger Number Projections (millions)

	2009/10	2010/11	2011/12	2012/13	2013/14	% increase over 5 years
Total Arrivals and Departures	8.264	8.304	8.774	9.086	9.394	13.7%

Source: Ministry of Tourism

Because of these significant (and growing) economic interests, the nature of both trade and travel is changing. New Zealand is interacting with an increasing number of international partners to establish free trade agreements, and pressure is increasing for more streamlined travel and cargo clearance processes. The biosecurity system faces a range of challenges:

- border activity is becoming more complex, with a greater range of people and relationships influencing (both positively and negatively) biosecurity risk;
- trade and travel patterns are changing, and volumes are expected to recover from the current global financial crisis and then continue to increase;
- shifts in major trading partners are changing the type and likelihood of exposure to pests and unwanted organisms associated with imported goods and passengers;
- all the while public (and therefore political) expectations of the biosecurity system are escalating.

The primary sectors, tourism and trade will be important drivers for New Zealand's economic recovery. Critical to this is the effective protection of the natural environment and biological

base, while enabling modern approaches/systems to add quality and efficiencies to front-line clearance services.

The scale of biosecurity activity and the commitment to biosecurity in New Zealand can be demonstrated by an overview of the financial summary of MAF's biosecurity vote estimated for the 2009/10 financial year. This assessment does not incorporate the expenditure associated with the national or regional pest management strategies that is managed by other parties such as the Animal Health Board or the Regional Councils.

	MAF – Vote Biosecurity 2009/10 ($000)			
	Revenue Crown	Revenue Departmental	Revenue Other	Total Cost
Policy, Enforcement, Standards	37,511	745	2,195	40,451
Export Certification	792	40	2,600	3,432
Surveillance and Incursion Response	36,737	500	5,001	42,238
Border Clearance Services	40,560	1,400	27,000	68,960
Total Vote Biosecurity	115,600	2,685	36,796	155,081

The biosecurity risk management system

To meet the needs of New Zealand, MAF's approach to its border work will involve the entire biosecurity system. This system-based approach will involve using a much broader range of risk management activities and having those activities carried out by those best placed to manage the risk.

MAF's biosecurity border risk management approach will consider the whole process of importing, including offshore activities, in-transit logistics, through the border including post-border management of any residual risks, and then support this with domestic surveillance, incursion response, and pest management.

The objective for improving the biosecurity system is to build toward a future where the biosecurity system is more efficient, and:

- provides incentives for those responsible for bringing risk goods or craft into New Zealand to better manage any biosecurity risks throughout the steps in the supply chain;
- enables MAF to more effectively target and penalise those who ignore these obligations;
- results in the planning for and management of responses to newly arrived pests being carried out by those best placed to do so; and
- achieves more adaptive, outcome-focused, coordinated and effective management of established pests.

To this end, there have been several key initiatives taken to improve the biosecurity system over the past years. These include taking an outcome approach to import health standards, the use of electronic systems to better service trans-Tasman passengers and an expansion in the tools inspectors are using to prioritise, manage and treat border risks.

There has also been initiatives progressed in the areas of Government-industry agreements and the development of the Farms On Line database. These initiatives will benefit the biosecurity system, and the sooner the required changes to the Act can be made, the sooner these benefits will be realised.

The problem is that many of these operational initiatives are being constrained by the Biosecurity Act. To fully realise the benefits of the operational changes which have been started, and to allow for further enhancements of the biosecurity system into the future, it was considered necessary to review and amend the Biosecurity Act. The intent of the review was to identify and focus on key areas of the Act that most strongly warrant amendment rather than attempting to do a fully comprehensive review of the entire Act.

A full review was not considered necessary to confirm the key matters that need to be addressed, nor was it possible in the time period set for the review process.

The Biosecurity Act 1993

The Act provides the legal basis for a wide range of activity across the biosecurity system. The Long Title of the Act is "An Act to restate and reform the law relating to the exclusion, eradication and effective management of pests and unwanted organisms".

The Act authorises MAF to set the import requirements that goods need to meet in order to get biosecurity clearance, and MAF inspectors at ports and airports inspect goods upon arrival to ensure these requirements are met. The Act also provides a suite of powers for government departments to manage newly discovered pests and unwanted organisms, and mechanisms by which regional councils and other groups can manage pests that are widely established. The Act also enables non-government organisations, such as the Animal Health Board, to acquire the status of a 'pest management agency' and implement a 'pest management strategy' using statutory powers.

The policy underlying the Act presumes that:

- it is central government's role to check that imports are safe at the border and to manage responses to new pest outbreaks; and
- those affected by established pests should be responsible for managing them.

In simple terms, the Act is concerned with pests and harmful organisms. It provides a legal framework to assist in keeping harmful organisms out of New Zealand, and to respond to any harmful organisms that do become present in the country.

The Act is enabling, so to give effect to the biosecurity system, 24 regulations have been put into place with the majority relating to levying. The three national pest management strategies are made by regulations and regulations are used to set out requirements for small scale organism management, ruminant protein, and the listing of notifiable organisms for example. The Act also allows for tertiary legislation, such as import health standards and regional pest management strategies, to be approved.

In so doing the biosecurity system and the Act are a very significant platform for New Zealand. It is through this that New Zealand demonstrates its commitment to a number of international treaties, foremost the *Agreement on the Application of Sanitary and Phytosanitary Measures (SPS).* The risk analysis and science that supports biosecurity management needs to be consistent the World Trade Organisation principles. New Zealand's

biosecurity status and systems are also paramount to the trade in agriculture, horticulture and forestry products, including the primary sector's value added processed products.

The status quo position is not to amend the Biosecurity Act at this time. Maintaining the status quo will not prevent ongoing operational work to enhance the biosecurity system; but it will frustrate some initiatives and prevent full benefit realisation. What this means is that the capital and operational costs associated with system enhancement are already committed, or will be sought irrespective of the legislative reform proposed.

Border Control

The Act regulates the importation of all goods into New Zealand. A key concept in relation to this is the idea of 'biosecurity clearance'. Inspectors (a statutory appointment) make decisions about whether to give biosecurity clearance for un-cleared goods. Biosecurity clearance may only be given for goods that are either not 'risk goods', or that comply with the provisions of a relevant 'import health standard' (IHS) and meet other criteria set out in the Act. To assist in managing the risks from imported goods, the Act includes powers to deal with both cargo and passengers.

This focus on biosecurity clearance at the border is essentially reactive and overly simplistic.

MAF is working to improve risk management at the border by making it truly system-based. A key objective for MAF is to maintain or improve the management of biosecurity risks at the border, by making sure that resources are targeted to the highest risks and using technology more effectively. This approach for the border will be based on four cornerstones:

1. Prioritisation and Targeting

MAF will use prioritisation and targeting to help focus resources on the areas that are most important. Decisions will be made using appropriate criteria and information, which will differ depending on the situation, but will include pest significance, international obligations, industry impacts and compliance history. At an operational level, profiling and intelligence will influence if, how and when we choose to intervene with passengers, specific consignments and/or the broader supply chain.

2. Requirements and Compliance

MAF will require others to take responsibility for managing the risks where they can influence or control this. This will improve compliance with the import health standards and the management around transitional facilities. The aim then is to set clear easily understood standards for New Zealand and to communicate them well. MAF wants to reward compliant passengers and traders with faster and more consistent processing based upon performance history. For passengers, this may mean a more direct exit route at the airport, and for importers of cargo, a move to fewer audits and reduced compliance costs. On the other hand, non-compliant parties are likely to have more intervention to encourage changes in behaviour.

3. People

MAF needs to continue to improve its levels of engagement. An effective system requires roles and responsibilities to be clearly defined and communicated. Importers, for example,

will need to ensure that they understand the requirements for importing goods and that their goods meet those requirements on arrival.

4. Information

Timely information needs to be used in all parts of the biosecurity system to provide assurance around system performance, aid decision making and to improve system responsiveness and communication with participants in the system. Improving the collection of information through the use of technology and electronic systems will allow MAF to process trade and travel documentation quicker and, in an increasing number of cases, in advance of arrival.

The status quo is to continue this development in the absence of legislative change. The increasingly complex external trade environment means MAF systems must continue to adapt. Some operational approaches are now no longer properly supported by the Biosecurity Act. If the Act is not amended, MAF will not reverse the biosecurity systems' development. The status quo would thus involve an increasingly frustrated work environment with growing legal risks as biosecurity operations stretch beyond the legal platform.

Incursion Response

When a harmful organism is detected in New Zealand, it may be appropriate to respond with an eradication or control programme. The Act confers a wide range of powers, including powers to enter property, impose movement controls, destroy infected property, and give directions.

MAF has recognised that there are industry and public benefits when the parties who would be affected by or should be involved in an incursion response are prepared prior to an incursion. Government decisions stemming from 2005 have recommended that a joint decision-making and cost sharing arrangement is put in place with the primary industries. The status quo will continue to see these agreements progressed. However, without amending the Act to provide for clear authorisation and appropriate funding mechanisms, the workability of the agreements will be much more difficult and likely to cause dissention and fragmentation within industry – not a desirable result. There could be significant down-side costs in this scenario.

Pest Management

Widely established harmful organisms may require ongoing pest management. National or regional pest management strategies can be created that allow a management agency to access powers in the Act. The management agency may be a government department, a local authority, or a body corporate. Central government agencies can also use the powers in the Act directly (i.e., outside of a pest management strategy) for an organism that has been classified as an 'unwanted organism'.

The pest management system has evolved over time, with unclear roles and responsibilities for individual agencies which result in gaps and overlaps in the system. As a result, the most cost effective management approach is not necessarily being adopted.

The following key issues have been identified:

- pest management roles and accountabilities are not clear enough;
- Crown obligations as a 'good neighbour' landowner do not match those of other parties;
- the legislation underpinning pest management activities is outdated;
- physical control and monitoring tools are insufficient for future needs; and
- collective action and participation is insufficient i.e. the costs of collaborating are too high.

The status quo will continue to see some pests not being managed in the best, most cost-effective way. Parties will continue to try and address operational aspects but the frustrations from the lack of clear roles and responsibilities will continue.

Existing Policy Mandate

Framing this status quo are the decisions that Government has already taken. This RIS assessment of options does not cover the following aspects in detail because they have already been subject to Cabinet decisions and separate regulatory impact assessment:

1. Farms On Line

Farms On Line has been subject to RIS analysis and this is not repeated again in this RIS. On 14 October 2009 Cabinet Economic Growth and Infrastructure Committee considered [EGI Min (09) 22/6) refers] the development of the Farms On Line project as detailed in the Cabinet paper and RIS [EGI (09) 197 refers].

MAF is developing Farms On Line as a Crown-owned resource to provide a more complete, robust and accurate rural property register to support MAF to prepare for, and respond to, biosecurity threats. MAF proposes to amend the Biosecurity Act to enable access to the databases needed to support Farms On Line.

2. Options to Extend Jurisdiction into the Exclusive Economic Zone (EEZ)

As part of its Oceans Policy work, the Ministry for the Environment has developed legislative proposals to fill gaps in the regulation of the environmental effects of activities in the EEZ (the areas of sea, seabed and subsoil beyond the territorial sea of New Zealand out to a distance of 200 nautical miles measured from the low-water mark along the coast of New Zealand, including the coast of all islands).

Managing the effects of activities on the biosecurity of marine ecosystems in the EEZ (and any consequent effects on the territorial sea) is one of the gaps to be addressed by the proposed legislative amendments. The previous Cabinet agreed to amend the Biosecurity Act to extend its jurisdiction to New Zealand's EEZ, as part of the Exclusive Economic Zone Bill [CAB Min 08 23/7 refers and associated RIS]. However, this legislation has not been progressed.

A more direct, and likely more timely, option is to amend the Biosecurity Act to extend its jurisdiction to the EEZ via the Biosecurity Amendment Bill. MAF is already managing some activities in the EEZ that pose a biosecurity risk on a voluntary basis. Implementing controls on a mandatory basis is not expected to require a material amount of additional resources at the present level of activity in the EEZ and will be undertaken with existing resources.

3. Options for Government-Industry Agreements

The Government has considered and agreed to implement a joint Government/industry approach that will improve priority setting to ensure the best use of limited Government and industry resources [EGI (09) 156 refers and associated RIS].

Legislative changes must be made to the Biosecurity Act to clearly authorise joint decision-making and to ensure that appropriate funding mechanisms are available. The proposed amendments fall into three broad categories:

- Provisions authorising Government-industry agreements, and clarifying how they relate to the exercise of statutory powers.
- The funding mechanisms to enable cost sharing and cost recovery under an agreement.
- The application of the Act's compensation provisions.

4. Trans-Tasman Border Systems and Streamlining

As a backdrop to the operational improvements being sought by MAF, the Prime Ministers of New Zealand and Australia have committed to enabling people and passengers moving more easily between the two countries. Specifically they have agreed to the SmartGate[3] technology for trans-Tasman passengers [CAB Min (09) 16/19 refers], changes in biosecurity screening and the feasibility of baggage x-ray image transfer [CAB Min (09) 26/7 refers], and a future work programme to streamline trans-Tasman travel with a view to having a one-stop shop passenger processing [CAB Min (09) 9/15 and CAB Min (09) 26/7 refers].

5. Joint Border Management System

Another associated project is JBMS, which will provide the operational infrastructure for these initiatives. The preferred delivery for JBMS is a two-tranche programme that will likely spread over four or more years. The Border Sector Governance Group work is stretching New Zealand's methods to best practice. JBMS will be fundamental to achieving this progressive improvement process in the context of a modern, enabling legal framework.

In November 2009 Cabinet agreed-in-principle for Customs and MAF to replace their aging computerised border clearance systems with a joint system subject to funding approval through the 2010/11 Budget round [CAB Min (09) 39/22 refers].

Operational Incentives

[3] Smartgate is an automated border processing system. It takes a live image of the travellers face and matches this to the image in a persons electronic-Passport using facial recognition technology. It also performs immigration and customs checks.

A final aspect of the status quo is the ongoing operational changes that are designed to improve biosecurity system compliance. Some of these actions are already being put into practice, others will require further analysis and discussion. Several of these initiatives are designed to provide positive incentives for importers to comply with requirements.

Table 1 illustrates some of the operational changes that are being considered.

Table 1: Operational Incentives

Initiative	Comment
Give lower intervention rates to those with good compliance histories (both cargo and passengers).	Likely to positively impact behaviour in many cases by actually providing incentives to comply at or prior to the point of the clearance decision.
Increase/improve educative communications (including training) to make importers more aware of the risks associated with their goods and what is needed to mitigate those risks.	Although MAF is already doing this work, it may be valuable to either do more work in this area and/or make sure MAF is doing the right work, especially regarding cargo. On its own may not provide sufficient incentive to override business drivers, thus more likely a supporting mechanism.
Make the import requirements (IHS) easier to understand.	This is underway, but of its own, may not provide sufficient incentive to override business drivers, thus also more likely a supporting mechanism.
Encourage industry to develop a code of practice to ensure IHS requirements are met.	May positively impact behaviour if codes of practice are picked up by NZ importers & wholesalers, the content improves awareness and knowledge, and there is industry pressure to adhere to the code.
Provide other rewards for good risk management behaviour e.g. passenger rewards for putting risk goods into disposal bins - certificates to children, or a bin that says 'thank you'.	Likely to positively impact behaviour in many cases by providing incentives to comply at the point of the clearance decision.

Problem Definition

When it was enacted in 1993, the Biosecurity Act largely reflected the biosecurity practices in place at the time. Seventeen years later the world is quite different. With the growth in trade and travel, the development of new technologies, and changes in the way supply chains operate, it is not always efficient or effective for government to manage import risks by relying on physically inspecting goods at the border. Indeed, many biosecurity risks are better managed offshore and while goods are in transit; it will often be the case that importers through their supply chain relationships are better placed than government to act. The Act does not, however, place obligations on importers (be they importers of risk goods or passengers bringing personal effects/baggage) to manage the risks they create.

All imports (the goods themselves, the people and/or the craft that bring them) present a potential biosecurity risk. Unfortunately the Act does not envisage a broad "system–based" approach to the management of import risks. Without a broad "system–based" approach there will be constraints on achieving strategic alignment between the New Zealand Food Safety Authority's imported food standards as a component of the import system.

Similar issues arise in the post-border space. Industry is often better placed than the Government to judge the merits of preparing for or taking action against newly arrived pests, but industry has limited capacity to influence the Government's priorities. Industry does not participate in readiness and response decisions. Nor does it share the cost of readiness and response activities for which it directly benefits except as a tax payer. In the absence of a shared decision making and funding model, industries will continue to rely on the Government to invest in readiness and lobby for the Government to respond to all new pest incursions. Decisions on priorities, investment in readiness, and the cost efficiency of services will continue to be sub-optimal.

Problems also exist in the management of widely established pests. New Zealand's pest management system has evolved over time, and there are unclear roles and responsibilities amongst the multiple players, which produces gaps and overlaps in services. The tools for pest management in the Act can be cumbersome and time consuming to use; they act as barriers to effective cross-stakeholder participation. For example there have only been three national pest management strategies agreed in some 17 years. Furthermore the Crown meets some, but is not bound to comply with all, of the rules in regional council pest management strategies, and this can undermine the effectiveness of programmes within these strategies.

Finally, since the Biosecurity Act was created, new threats have emerged or become apparent. This is particularly so in the marine area. The tools in the Act are not well suited to the management of marine biosecurity risks posed by craft visiting New Zealand waters, and the Act generally has no effect beyond the 12 nautical mile limit. New economic activity within the 200 nautical miles exclusive economic zone, such as the use of drilling rigs, presents biosecurity risks that cannot at present be effectively managed.

In summary, the Biosecurity Act is no longer enabling contemporary, system-wide and multiple-stakeholder approaches and, at worst, hinders new initiatives to improve or better manage biosecurity risks, with the result that biosecurity interventions are less efficient and effective than they could be.

Objectives

These objectives are listed in order of their priority. Objective 1 is the primary objective. There was no mathematical weighting method applied in the option assessment process.

Objective 1: Enable effective and efficient biosecurity risk management

MAF's core task is to protect New Zealand from biosecurity risk, whilst still facilitating trade and travel. This involves border security, incursion management and the ongoing management of pests that have established in New Zealand.

Effective and efficient biosecurity will require new and innovative approaches. MAF requires improved regulatory tools for responding to an increasingly complex set of risks and expectations. Interventions should be targeted on areas of greatest risk, and at points in the supply chain where they will have best effect. Greater use should be made of technology and intelligence systems.

Government and industry are looking to see that the legislative changes proposed do not impose unjustifiable compliance costs and time impositions on commerce, and equity. Specifically Government policy demands examination of compliance cost impacts and encourages thinking about how systems might be improved to streamline operations. MAF wants to focus resources in the areas where they will maximise benefit/value while maintaining biosecurity protection levels.

Objective 2: Provide clear roles and responsibilities

A precursor to the formation of partnerships is clarity around the respective roles and responsibilities of the system players. Where there is a lack of such clarity, productive activity can be frustrated as parties struggle to find their proper role, or avoid taking action. Achieving role clarity, and sheeting home responsibility to those that are best placed to act in any given circumstance, will be important in ensuring a workable biosecurity system.

New Zealand's biosecurity cannot be the responsibility of central Government alone. Local government, the trade and travel industry, domestic industries with natural resource interests, and other stakeholders all have roles to play. The Biosecurity Act should enable partnerships and cooperation between these players both at the border and within New Zealand. An important part of this will be information sharing and the cooperative use of data systems.

Objective 3: Ability to handle future change

Biosecurity risk management has seen significant modernisation in recent times. And we can be sure that further significant improvements will be wanted in the future. Where possible the amendments need to take a broader rather than narrower focus, they need to be enabling rather than prescriptive to avoid locking in 2010 practices and tools for the future.

Assessment of Options

The Biosecurity Amendment Bill, as planned, will contain a broad range of amendments. As a result of the review MAF prepared a large number of internal working documents that identify the potential options, impacts and risks for each amendment. These are summarised in this RIS.

Enforcement

The biosecurity amendments will incorporate changes to the offence and penalty provisions of the Act. Such changes will be important for the effective implementation of the amendments, and it is usually only in the discussion of implementation that any further reference to enforcement is made in this RIS.

Changes in the enforcement regime will be necessary to see the effective implementation of the amendments. Non-compliance with the Act occurs in a number of different areas. Not all non-compliance needs to have an enforcement response; for example education is often more effective. It is important, however, that effective enforcement options are available to deal with cases of serious or repeated non-compliance. It is also important that a range of enforcement options are available to allow a graduated approach to different levels of non-compliance.

Some of the non-compliance that is encountered is difficult to respond to effectively using the enforcement options that are currently available under the Act. The reasons for this include:

- offence provisions that do not directly target the conduct that is of concern;
- offence provisions that include complex elements that are difficult to prove in practice;
- limited options for dealing with repeated, lower-level non-compliance; and
- penalties that are not commensurate with the seriousness of the non-compliance.

The Biosecurity Amendment Bill will give rise to a broader range and application of enforcement tools. These will be crafted to provide a more flexible, effective and efficient regime to support biosecurity compliance. Human and civil rights will also be taken into account.

A: Options to Improve Border Management

Overall assessment of effectiveness and efficiency

This section of the RIS goes on to provide an **overall** assessment of the collective benefits/costs of the proposed changes relating to border management. In the border management area, the objectives and benefits will only be fully realised if all the changes are made as they are so strongly interconnected. MAF considers that the impacts of the proposed legislative changes to border management need to be combined as the overall benefits exceed the sum of the individual components. **Individual** option analysis for each of the proposed improvements follows the overall assessment.

The enhanced risk management capacity arising from the proposed changes to the Biosecurity Act will improve biosecurity interventions and management at the border. This will result in a consequential lessening of the demand on post-border response management activity (incursion response and pest management). Intercepting unwanted organisms before they cross the border will avoid significant costs to the New Zealand economy.

Agriculture, horticulture and forestry, and tourism have the potential to lose billions of dollars per year as a result of biosecurity issues. In addition, biosecurity incursions could seriously reduce New Zealanders' ability to enjoy the country's natural environment. A recent study [*Economic Costs of Pests to New Zealand*, *Nimmo Bell*, *June 2009*] investigated the total economic cost of pests to New Zealand's primary sector and estimated the impact to being in excess of $2 billion per annum. Of this, 45% is defensive/control costs by regional councils, central Government and the private sector and 55% is the value of output losses.

The current value of protecting New Zealand from potential biosecurity incursions depends significantly on two figures: the size of the impacts and the probability of the impacts occurring. The magnitude of the potential economic cost means that reducing the probability of incursions can lead to significant economic benefits.

There have been a number of significant incursions, for example, painted apple moth, Asian gypsy moth, and didymo since the Act has been in force. Economic impact assessments have modelled, in the absence of Government intervention, the impact on the economy of various pests and unwanted organisms that have established (i.e. have not been eradicated) since MAFBNZ was formed. While MAF considers that a higher figure could be justified, the model assumes that interventions have been 50% effective in reducing or slowing the impacts of these incursions.

These values are summarised in Table 3 below. It is important to note that this analysis is based on only a subset of those pests which have established so can therefore be considered conservative.

Table 3: Annual Projected Impacts of Incursions ($million)											
Incursion	Source	2010/ 11	2011/ 12	2012/ 13	2013/ 14	2014/ 15	2015/ 16	2016/ 17	2017/ 18	2018/ 19	2019/ 20
Gum leaf skeletoniser	MAF	5.4	7.6	7.7	7.8	7.9	8.2	8.4	8.7	8.9	9.5
Sea squirt (*Styela clava*)	NZIER	2.1	3.2	4.0	4.6	5.1	5.5	5.8	6.2	6.6	7.0
Varroa	MAF	3.4	3.3	3.1	3.0	2.9	2.7	2.7	2.7	2.6	7.1
Didymo	NZIER	73.2	84.5	84.5	84.5	84.5	84.5	84.5	84.5	84.5	84.5
Clover root Weevil[4]	NZIER	195.7	207.5	229.8	257.4	288.2	305.5	313.6	313.6	313.6	313.6
Total		279.9	306.1	329.2	357.3	388.6	406.3	415.1	415.7	416.3	421.7

At a discount rate of 9.5% the annualised economic impact of these incursions is $361 million [*source: Joint Border Management System Stage 2 Business Case – Appendix H page 4*].

The following assessment in Table 4 sets out the degree each of the proposed suite of changes would contribute to a reduction in the $361 million annual direct costs and residual impacts. The assessment is based on MAF's experience and is not derived from extensive risk analysis.

Table 4: Contribution of proposed amendments to reducing risks		
Reduced risk arising from:	Range of contribution %	Most Likely contribution %
Improving legislative basis for obtaining information, including the use of early information	0.5 to 1.0	0.75
Allowing full use of electronic system	1.0 to 1.5	1.25
Providing for improved inspection methods	0.0 to 0.5	0.25
Providing for improved post-border risk management	0.0 to 0.5	0.25
Providing supply chain responsibilities	0.5 to 1.0	0.75
Improving performance around transitional facilities	0.5 to 1.0	0.75
Improving Agency cooperation	0.0 to 0.5	0.25
Improving import health standards	0.0 to 0.5	0.25
Improving management of craft (aircraft and vessels)	0.5 to 1.0	0.75
TOTAL most likely benefit from reducing annual costs and residual impacts of pests		5.25

[4] The clover root weevil analysis is based on the economic costs of farmers applying the correct levels of nitrogen fertiliser to offset the reductions in natural nitrogen fixed by clover due to the infestation and the costs of providing additional supplementary feed to offset the reduction in the high quality feed component of white clover foliage. There are no net losses to agriculture production assumed.

The total most likely benefit attributable to the suite of legislative changes to improve border management is estimated at 5.25%. Using this 5.25% reduction in incursion risk of an avoided biosecurity incursion, the economic impact attributable to the legislative changes to improve border management is $18.95 million per annum (5.25% of $361 million).

Sensitivity Analysis	Reduction in risk (%)	Benefit per annum ($million)
Low	3.0	11
Most likely	5.25	19
High	7.5	27

Some of the legislative changes proposed are necessary for MAF to fully implement a new, streamlined passenger and cargo clearance model over time and therefore achieve efficiency benefits. The objective is to better focus resources on passengers/baggage/cargo/mail identified as posing greater risk. The outcome will only be possible with the suite of legislative changes to create a framework that allows:

- moving away from 100% screening of incoming passengers;
- moving away from reliance on visual inspection;
- full use of electronic information and systems;
- the obtaining and sharing of passenger/cargo information;
- the use of a range of targeted risk management tools/actions; and
- for the use of advance information received and used pre-arrival to risk-profile passengers and cargo - facilitating smooth clearance for low risk passengers/cargo and targeted assessment of higher risk passengers/cargo.

The impact of the proposed amendments and the associated full improvement then possible in the operation of biosecurity risk management systems/methods will result in faster clearance and release processes leading to the shortening of order cycle times and lead times, cutting costs through the reduction in the number of supply chain delays, and ultimately improved customer service.

Benefits will be found in the tourism sectors as well as the merchandise trading sector. High levels of satisfaction are likely to add reputational value to New Zealand and attract additional tourists and economic growth. For example, increasing holiday trips from Australians to New Zealand as a preferred destination compared to the Pacific Islands or South-East Asia. These benefits are potentially very large but are not quantified.

Overall assessment of clarity around roles and responsibilities

The legislative changes proposed to improve border management contribute to this objective. There is a lack of clarity about obligations and responsibilities in New Zealand's import system. Too much weight is being placed on MAF inspection at the border, and not enough on good risk management practices by importers and logistics operators. For the biosecurity system to work optimally, a more comprehensive approach is needed to better encourage:

- importers to take broader responsibility for managing the overall biosecurity risk posed by their goods rather than just meeting the requirements for border clearance. To this end, importers will have specific duties applied, for example to ensure risk goods are compliant with the relevant import health standard. Duties will be supported by the use of Compliance Orders and declarations when appropriate;

- aircraft and sea craft operators to comply with the applicable standards and specific duties will apply. Duties will be supported by the use of Compliance Orders, declarations and record keeping; and
- operators of transitional facilities and containment facilities to ensure biosecurity control is maintained. Specific obligations are proposed and these too would be supported by Compliance Orders.

The introduction of these new duties will clarify that these parties have responsibilities in relation to supporting the biosecurity effort to keep pests and unwanted organisms out of New Zealand and will improve compliance as people understand biosecurity risk better and what their role in the system is.

Cooperation with other border agencies will be improved by improving the use of information (including sharing information between key agencies), enabling the use of electronic information/systems, and enabling the use of inspector powers to support other agencies. A key example is that the New Zealand Food Safety Authority manages its own import system for food under the Food Act 1981 (and proposed Food Bill) – and strategic alignment of approaches will improve the efficiency of managing imported foods. The improvements around the transitional facilities should add clarity and increase cooperation between MAF inspectors and industry operators. These benefits are not fully quantified, because MAF cannot offer any certainty around the amount of benefits that will arise, but these benefits could be very significant.

Improved agency cooperation could contribute to greater:
- biosecurity interceptions;
- illegal food interceptions;
- trade in endangered species (CITES) interceptions;
- drug and contraband detection; and
- identification of terrorism activity.

On an annual basis these benefits are likely to be measured in the tens of millions.

Statutory decision-making roles are usually clear in the border management area. The amendments proposed for improving inspection methods will, however, clarify the role of the "chief technical officer" and the "inspector" – both statutory positions. Likewise, changes in the arrangements for enabling clearance for low risk goods via the transitional facility will clarify the role of the inspector and the transitional facility operator.

Overall assessment in regard to future change

Biosecurity risk management is a very dynamic area. There has been significant modernisation in recent times. The legislative changes to border management bring the legal framework up-to-date and allow for future changes in practice at the border.

MAF will endeavour to ensure that the drafting of the amendments is kept flexible and enabling, where possible. The improved ability to handle future border management changes supports economic growth – again these benefits are potentially large but are not able to be quantified.

Assessment of border management amendments against the Objectives

Table 5 sets out a summary overview of how the preferred option for each of the specific amendments measures up in terms of the objectives and therefore also in terms of the degree (low, medium or high) the benefits will be realised.

Table 5: Contribution of Border Management Amendments to Objectives

Proposed Amendment	Objective 1 Effective and efficient management of biosecurity risks	Objective 2 Clarity of roles and responsibilities	Objective 3 Ability to handle future change
1. Improve use of information	Medium - met from getting needed information and early information.	Medium - clarity that MAF can obtain information. Information will be shared with other border agencies.	High - amendments will be enabling.
2. Use of electronic systems	High - electronic systems support improved risk profiling, and decisions can be communicated efficiently.	Medium - will be able to share system eg JBMS.	High - amendments will be enabling.
3. Improve inspection methods	Low – because status quo already involves new methods.	Low.	High - changes will be inclusive and not constrain new developments
4. Improve post clearance management	Low/medium - post-clearance management is important where needed, but generally few risk goods would require this.		High - amendments will be enabling.
5. Improve importer responsibilities	Medium - through other parties adding to the direct support of biosecurity.	Medium - met through duties and requirements to declare.	
6. Improve transitional facilities	Medium - improvements affect low risk goods. Don't want to default to heavy handed inspection.	Low - met through clearly setting out transitional facility operator role.	
7. Improve Agency cooperation	Low - avoids unnecessary compliance duplication.	High.	
8. Improving import health standards	Low - sets target outcome – this adds to effectiveness and flexibility adds efficiency benefit. The inclusion of 'efficacy' and 'feasibility' will improve effectiveness and efficiency considerations.		High - amendments will be enabling.
9. Insert a standard for craft (aircraft and vessels)	Medium -these standards will enable risks associated with craft to be better managed. There will be benefit in having craft requirements in one legal instrument.	Medium - met through duties and requirements to declare.	High - amendments will be enabling.

Cost and regulatory assessment of border management amendments

Table 6 sets out a summary overview of how the preferred option for each of the specific amendments may give rise to costs compared with the status quo option. Where:

- **Nil** means there should be no adverse cost impact (for industry this means no increase in compliance costs and for Government this means no fiscal impact)
- **Small** means there is likely to be a small cost impact that should not effect economic behaviour
- **Big** means there would be a significant cost impact.

Note that, for several proposals, the status quo option involves progressing operational/system changes, but without legislative change.

A principle of both the Government's *Code of Good Regulatory Practice,* and its August 2009 statement on "*Better Regulation, Less Regulation*" is that new regulation will be introduced only when it is required, reasonable and robust. The options analysis discusses costs and regulatory justification. As an overview the table also sets out a regulatory description of whether the proposed amendment is likely to add a new section into the Act, or is an amendment to existing sections.

Table 6: Cost and Regulatory Impact of Border Management Amendments

Proposed Amendment	Importers	Other industry	Government	Legislative Change
1. Improve use of information	Small*	Nil	Small	New section will be inserted.
2. Use of electronic systems	Nil	Nil	Nil **	New sections will be inserted.
3. Improve inspection methods	Nil	Nil	Nil	Amend existing section, enabling in nature.
4. Improve post clearance management	Small***	Nil	Nil	New sections and amend existing sections, enabling in nature.
5. Improve importer responsibilities	Small****	Nil	Nil	New sections will be inserted.
6. Improve transitional facilities	Nil	[Operators] Small ****	Small	New sections will be inserted.
7. Improve Agency cooperation	Nil	Nil	Small	New sections will be inserted.
8. Improving import health standards	Nil *****	Nil	Small	Amend existing section, enabling in nature.
9. Insert a standard for craft (aircraft and vessels)	Nil	Nil	Small	New sections will be inserted, enabling in nature.

* The legislation will enable MAF to require information from persons in charge of craft and importers, including information in advance of arrival.

** The costs of system development fall to specific projects such as the Joint Business Management System and SmartGate: the amendments ensure appropriate use of that information by the regulator.

*** Requirements post border will not be often be applied.

**** There will be a small compliance cost associated with meeting duties and making declarations.

***** There is potentially broad impact, for the majority of importers that want to follow tried and proven methods there will be no additional compliance costs. For those that do wish to develop their own methods, this is a commercial decision and it is assumed that this would only be done where compliance cost savings are identified.

Detailed Options Analysis of Border Management Amendments

1. Options Analysis: Improve use of information

In order to effectively use modern risk assessment techniques, MAF needs information about imported goods, craft, and passengers. MAF has long standing relationships with the New Zealand Customs Service (Customs), and certain information on incoming cargo supplied by Customs is vital for biosecurity risk management. However, some information MAF would like is not available, and the Biosecurity Act does not empower MAF to obtain information on its own behalf.

The use of advance information about incoming goods, craft and passengers before these arrive in New Zealand will be important to enable a pre-arrival assessment of the risks posed so that biosecurity inspectors are ready to respond in a way that best manages biosecurity risk while facilitating clearance.

The ability to share information with other agencies is also driving change. The intention is to enable sharing of personal information with the objective of managing compliance, offence and crisis situations. A disclosure provision in the Act will remove any doubt about what information can be disclosed.

Option 1.1 – Status quo

Under the status quo, MAF will not amend the Act and continue without the legal power to require needed information. MAF would continue to get what information it can through Customs.

Weaknesses in the current information provisions in the Act and constraints on the ability to share personal information would mean working forward with an unclear legal situation. Early information is becoming fundamental to modern biosecurity processes. The absence of this information would continue to frustrate and constrain the effectiveness of the day-to-day operations of the biosecurity system. The omission of a disclosure provision could be a major limitation in a border compliance investigation.

Option 1.2 – Amend the Act to improve information management (preferred)

Amendments to the Act will provide the ability to:

- obtain information about arriving goods, craft and passengers;
- use information about arriving goods, craft and passengers that was received prior to arrival
- disclose personal information to certain [government] agencies.

Consultation

There was general recognition that MAF needs adequate information to ensure biosecurity management. There was wide support for gaining access and use of early information. Stakeholders directly involved with importing did not want information provision to be excessive and wanted information to be shared by border agencies so that there was no unnecessary duplication of documents.

Implementation

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements that have been identified for this amendment.

Systems and supporting operational manuals will be required to be prepared. MAF is already negotiating with international agencies and/or companies to obtain advance information before goods, craft and passengers arrive in New Zealand. There may be several operational issues that will need to be worked through as and when information transfer systems are implemented. Any costs that cannot be absorbed into MAF baseline funding will need to be subject to Cabinet agreement (if not already done). There will be some associated training and procedural changes.

Recommendation

Accurate and timely information is the basis on which risk profiling and decisions for passenger and goods clearances can be made. MAF cannot achieve a fully effective biosecurity system as the information needs of MAF do not exactly correspond with the available information from Customs. Improved information will allow for the development of joint systems and the capture of benefits in agency co-operation and streamlining.

Any costs associated will be borne by Government within current funding baselines. Overall, only very small additional costs are envisaged for craft operators and importers because the type of data MAF would seek (e.g. port of arrival, number of passengers, number of crew, any goods to enter New Zealand) would already be known.

Early information will meet the objective of effective and efficient biosecurity risk management. The Act needs to be amended to enable an inspector to use that information for risk profiling and passenger/cargo clearance decisions. Information disclosure, will assist agency co-operation and the overall performance of the border agencies in terms of effective risk management.

2. Options Analysis: Use of electronic systems

The Biosecurity Act does not reflect the significant advances in technology over the past decade. The Act requires some functions to be carried out in a manual way, such as passenger declarations and goods inspection. For other functions, there is uncertainty about whether available (or future) electronic systems can be used to support biosecurity risk

management. Legal certainty on the use electronic devices and systems is necessary for MAF to improve risk targeting and manage risks in a more efficient way.

Electronic systems could be used to:

- enable passengers to make declarations electronically rather than via the current paper-based declaration card;
- capture and store information to support the development of risk profiles, inform risk assessment and decision-making, and maintain records of non-compliance. This means MAF could better use information to target those not complying and facilitate the biosecurity clearance of those who are; and
- issue directions, authorisations and clearance to goods, where appropriate. This means MAF could better target inspection resources to areas of high risk and focus efforts on non-compliance.

Option 2.1 – Status quo

If there is no legislative change, MAF will be unable to fully implement new border system initiatives agreed to by Cabinet, and the potential benefits would not be realised. MAF's ability to become more efficient and effective at managing biosecurity risks would be limited. When passenger and cargo volumes increased, there could be a detrimental impact on biosecurity risk management at the border unless significant additional resources are made available to continue manual screening and clearances.

Option 2.2 – Amend the Act to enable electronic systems to be used as an aid to clearance decision-making

This amendment would only provide for specific and limited use of electronic information (e.g. for risk profiling and risk assessment). An inspector would still be required to give directions, authorisations and issue clearances manually. This option would clarify that MAF could use electronic systems as a tool in a limited way, but it would not fully enable moving to the desired new future state for the border systems approved by Cabinet.

Option 2.3 – Amend the Act to allow MAF to fully use electronic systems (preferred)

Under this amendment, MAF would be able to use electronic systems as an aid to decision-making (e.g. profiling, risk assessment) and to do the full range of things an inspector can do, including direct, authorise and communicate clearances for cargo and passenger baggage, where appropriate. This option enables the use of electronic systems to automate certain biosecurity functions and would allow MAF to take advantage of new technologies in future.

Enabling electronic systems to be used at the border for the full range of functions will help MAF to become more efficient, and to target resources in the most appropriate way to best match biosecurity risk. It will enable MAF to implement initiatives which use already available technologies, such as the Joint Border Management System (JBMS) and x-ray image transfer, and take advantage of future technologies as these become available.

Consultation

There has been widespread general support for electronic data and the ability of electronic transfers to enable advance information and streamlining of document transfer. Many stakeholders have been surprised that the Act does not readily accommodate the use of electronic data.

However, there was one area of specific concern. This related to the reliance on electronic declarations by passengers. Some stakeholders voiced concern that it would be too easy for passengers to provide a false declaration without adequate verification activity. There was also concern with the timing of the declaration and duty free or in flight food purchases. These matters are essentially about things that need to be thought through for systems implementation.

Implementation

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements that have been identified for this amendment.

The changes in the Act will be enabling. The implementation of electronic systems is linked to other work streams such as through the work to allow people and passengers moving more easily between Australia and New Zealand including SmartGate technology and baggage x-ray image transfer; and through the planned Joint Border Management System.

Operational development will need to be matched with procedural manuals and staff training. This is happening now and has been an integral part of the operational improvements being trialled and implemented at the border.

Note that MAF is a party to the Border Sector Governance Group along with Customs and Department of Immigration. Through this Group's oversight various novel border management approaches are being trialling or introduced primarily to implement the trans-Tasman travel priorities. Successful approaches will no doubt be rolled out for broader application as appropriate. The suite of changes to improve border management will need to enable future operational enhancements.

The enforcement provisions in the Act will need to be updated to accommodate the changes in this area. For example, a new offence provision has been proposed to make it an offence for passengers to make false declarations or for importers to provide false information to an electronic system.

Recommendation

Option 3 is the only solution that enables MAF to fully use electronic systems in the future for passenger and cargo clearance processes, including as an aid to decision-making and to potentially automate some functionality of the biosecurity management system. It is the only option that enables full benefit realisation.

Electronic systems can facilitate trade and passengers at the border; this streamlining will reduce costs for importers. Resources can also be used to strengthen enforcement activities targeting those who do not comply with biosecurity requirements.

Note that this proposed amendment only enables the use of electronic information. Systems development, and associated funding decisions, will be subject to a separate Cabinet approval – such as for the Joint Border Management System – and is outside the scope of this RIS. These costs would be assessed at the time, and the case made subject to the usual process scrutiny. These costs cannot be quantified at present.

3. Options Analysis: Improve inspection methods

When an inspector determines whether to clear goods for entry to New Zealand, the Act obligates physical/visual inspection of risk goods. While this can be an important way of assessing risk, it is not always the most effective way to do so. In some cases, visual inspection will not enable the inspector to be satisfied that there are no risk organisms present (for example viral and bacterial diseases). In others, thorough visual inspection is not practical as it would involve dismantling or damaging the goods. The sheer scale and nature of New Zealand's import trade means it is not viable, nor efficient, to visually inspect every imported risk good.

Option 3.1 – Status quo

Under this option, the Act would retain the obligation for visual inspection in all circumstances in order for an inspector to be satisfied that biosecurity requirements have been met and that biosecurity clearance can be given.

There are no clear benefits of retaining the requirement for inspectors to visually inspect all risk goods. It does not appropriately target resources to risk. Compared with the alternatives, the status quo is resource intensive, and does not enable any future improvements in streamlining clearance procedures. MAF would not be able to take advantage of modern technologies and methods for clearance processes and therefore would not realise the full benefits of the already agreed initiative by Cabinet that support improved efficiencies in the border system.

The legislation is therefore hampering MAF's ability to implement the most effective and efficient biosecurity risk management inspection service modern methods would allow.

Option 3.2 – Amend the Act to remove obligation to visually inspect, be silent about methods

The amendment would allow an inspector to use any method in order to be satisfied that no pests will come into New Zealand. It would allow MAF to use the full range of modern inspection techniques available, and to engage them in any manner or combination wanted. It also enables the implementation of the new border management initiatives already agreed by Cabinet.

Under this option, methods can be matched to risk. Being silent on methods, arguably future proofs the legislation and creates opportunities for MAF to explore, innovate and use better, more efficient and effective ways of managing risk. However, because this option provides

no clear empowerment for inspectors, there is no transparency about the measures that can be employed.

Option 3.3 – Amend the Act to remove obligation to visually inspect, inclusively list methods (preferred)

Under this option, the variety of different information sources and intervention methods that an inspector may use to give clearance would be listed. The list would be inclusive, expressly allowing for other and new methods. This option would enable, but not mandate, the use of any specified tool or method.

As with option 3.2, option 3.3 enables MAF to utilise the full range of modern inspection techniques available, and to engage them in any manner or combination wanted. Option 3 also enables MAF to implement the new border system and initiatives already agreed by Cabinet.

Under this option, resources can be targeted to risk and MAF would have flexibility to enable inspectors to use the information and intervention methods which are most appropriate (most effective) to manage risks or to verify that effective risk management has occurred for the risk goods in question. Having the clear legal platform enabling the use of a range of inspection methods also enables cost efficiencies to be captured by selecting the least costly method of achieving the necessary level of biosecurity efficacy required.

The use of an inclusive list future proofs the legislation and creates opportunities for MAF to explore, innovate and use better, more efficient and effective ways of managing risk.

Consultation

There was very wide support for shifting risk management off-shore, for the expansion of electronic systems, and for improved border-agency cooperation. These aspects have repeatedly gained strong support from stakeholders.

There was general support for allowing the use of a range of inspection methods, and those stakeholders involved with importing certainly understand the limitations of visual inspection. While supporting the use of modern inspection methods, those stakeholders representing domestic industries/environmental interests and Maori have expressed concern that any changes must not lower the current level of biosecurity protection.

There is a comfort for stakeholders in ‘seeing’ MAF inspectors physically examining goods and use 100% x-ray imaging of passenger luggage. The changes proposed in no way remove or limit the use of physical/visual inspection where this is an appropriate inspection method; they just enable other approaches to be used where those alternative approaches would provide better information or better manage risks.

Implementation

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements or operational issues that have been identified for this amendment, as its principal effect is to bring the legislation up-to-date with existing methods.

Recommendation

Both options 3.2 and 3.3 enable current practices to continue and both remove the unnecessary costs associated with mandated visual inspection. On balance, option 3 provides greater clarity for inspectors around the use and process for use of the methods. This approach aligns best with the *Legislation Advisory Committee Guidelines*. It also provides greater reassurance/certainty for some stakeholders and the public about what sorts of tools are used, and that the level of biosecurity protection is being maintained or enhanced.

4. Options Analysis: Improve post-clearance management

Currently it may be more appropriate for some aspect of biosecurity risk management to occur after biosecurity border clearance has been given. Under the Biosecurity Act, however, MAF has few tools available to allow it to proactively manage risk goods to prevent an incursion once the risk goods are cleared for entry. Creating specific regulations for this purpose is the only existing tool that can currently be used, but this can only be used in limited circumstances and to manage certain risks (e.g. those posed by some waste products, such as feeding of waste to pigs).

Incursion events are managed using the extensive range of incursion powers in the Act and this proposal in itself would not change that; instead the aim is to manage the residual risks that are posed by imported goods following clearance to prevent an incursion event.

MAF sees significant value in improving the ability to proactively manage the post-clearance residual risk posed by some imported goods. This would allow MAF to better manage risks across the border system, including, pre- and post-clearance.

In turn, this should reduce both the costs on industry to comply and the resources needed for an incursion response. MAF has investigated a number of options to allow for improved proactive management of post-clearance risk, as detailed below.

Option 4.1: Education about post-clearance risk management needed for certain goods

Educative communications are a non-regulatory option used to encourage people importing or using imported goods to take (or not take) certain actions to better manage post-clearance risks. This option may be effective in some cases where the user-groups are large and diffuse, the actions needed are simple and there are those who are willing to comply.

This option has the advantage of being non-regulatory, but this is also a weakness in that there is no legal obligation on people to follow the education messages. It is not likely in isolation to be effective at improving risk practices across the full range of users or holders of goods that would benefit from better post-clearance risk management. Educative material will be used to supplement the legislative option.

Option 4.2: Amend Act to empower post-clearance risk management

Three possible provisions could be included under this option:

- a new regulation making provision to create post-clearance requirements for general biosecurity risk management purposes;
- expanding the scope of IHSs to enable the potential inclusion of post-clearance requirements; and
- a specific provision to provide for conditions to be applied to clearances.

A new regulation-making provision

The new power would need to be broad and enable regulations to be made for the purpose of prescribing post-clearance risk management for imported risk goods. Regulations could be passed as considered necessary to manage post-clearance risks. This would be useful when it was necessary to regulate all parties that may come into possession of certain imported risk goods.

MAF would be able to enforce non-compliance with the requirements of any regulations passed. Post-clearance requirements developed through the passing of regulations carry advantages around rigour of process and consultation.

There would be compliance costs associated with the requirements set by regulations for users and holders of risk goods. These would be very specific to the situation and requirements, and cannot be assessed at this time. An analysis would need to be done as part of Cabinet processes before any new regulations were made.

There would also be costs to MAF in developing and promulgating regulations and to enforce non-compliance, but such business as usual costs are not expected to alter baseline funding.

Expand the scope of import health standards to enable inclusion of post-clearance requirements

Requirements, additional to clearance requirements, could be imposed using an IHS. Post-clearance requirements would apply to persons in ownership or possession of the imported risk goods. This has definite value in situations where there is a discreet group of users of the imported goods in which MAF has a level of trust and an ability to identify and audit to ensure compliance. The use of the duty on importers to comply with the relevant IHS requirements would also apply to any post-clearance requirements as this would help establish the duty of care element required for a successful common law claim.

This approach creates transparency of all biosecurity-related requirements across each category of risk goods as post-clearance requirements would be developed and consulted through the normal process for making an IHS. It also has the advantage of making use of well-established existing science and processes for developing requirements to manage biosecurity risk. In some cases, post-clearance requirements could be used for existing imported risk goods instead of the transitional facility system.

To users and holders of risk goods where there are post-clearance requirements, there will be new costs of compliance. These would be very specific to the situation and cannot be assessed in a generic sense. A test of feasibility and assessment of cost would occur at the time any new post-clearance requirements were set in an IHS.

There will be costs for MAF to develop and promulgate the requirements, audit compliance and to enforce non-compliance. These costs would be incurred with the usual work on IHS, and no change to baseline funding is anticipated.

A specific provision to provide for conditions to be applied to clearance

This would require amending the Act to enable conditions to be applied by an inspector when issuing clearance. A high level list of the range of conditions that might be applied would be published as guidance. Individual IHS could then specify the particular conditions that could be applied to that category of goods and an inspector would have discretion to apply the conditions.

An example is the ability to waiver the quarantine requirements normally applied to imported pet dogs for seeing-eye dogs. There would still be some basic conditions that an owner would follow (e.g. take the dog to a vet immediately if there is any sign or symptom of illness; keep the dog on the owners property unless in its harness or on a leash) that substantially mitigates the residual biosecurity risk.

The use of conditions on clearance creates flexibility for requirements to be applied only as needed, rather than in relation to an entire category of risk good. This means that costs would only be imposed on users where absolutely necessary. There would be associated costs to develop the requirements, and to investigate reports of non-compliance (note that enforcement is likely to be responsive and there is no plan to implement a proactive compliance regime); but, as with the other areas, these costs would be absorbed into current baseline funding.

Consultation

Stakeholders indicated general support for MAF to introduce post-clearance requirements and there are working examples of where this would be known to improve the existing situation. The benefits of doing this in terms of improved effectiveness of biosecurity risk management were understood and accepted. Of note, post-clearance requirements would support and not replace other measures.

Concern was expressed by some groups about the costs that the requirements would impose on importers and users of risk goods. Also there were questions about MAF's ability to audit compliance and enforce non-compliance with post-clearance requirements. MAF certainly recognises these potential difficulties and has stressed to stakeholders that implementation will carefully be assessed in terms of feasibility and cost effectiveness. If a post-clearance requirement was not going to add value to biosecurity management in any particular situation, then it would not be used.

Implementation

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements that have been identified for this amendment.

The improved range of legislative tools to allow improved post-clearance risk management would be enabling and also discretionary, and would only come into effect on a case-by-case basis when either new regulations are made or import health standards developed or amended.

MAF will need to make plans to ensure staff and stakeholders understand the new system and to develop mechanisms for ensuring that post-clearance requirements are clearly communicated to affected parties as they are developed.

Recommendation

MAF's policy intention is to allow for proactive management of a range of potential post-clearance risks associated with imported goods. As the amendments under option 4.2 would be appropriate in different circumstances depending on the type of goods and the associated biosecurity risks, MAF considers that the issue warrants this multi-tooled approach. Each of the legislative options should be progressed for use on a case-by-case basis.

Making the legislative amendments of option 4.2 does not rule out the use of educative communications (4.1). These could be used either as a tool on their own where the risks were relatively low, or to support the regulatory approaches outlined in option 4.2.

5. Options Analysis: Improve importer responsibilities

There is a lack of clarity about obligations and responsibilities in New Zealand's import system. Currently MAF sets the requirements for goods to be imported into New Zealand under the Act. The Act effectively places the responsibility on MAF to set requirements to ensure that imported goods do not present a biosecurity risk, placing full reliance on the 'point' of MAF inspection at the border. In the case of "risk goods" as defined in the Act, these requirements are set out in an IHS.

This approach promotes two behaviours that are not conducive to effective biosecurity management:

1. Some importers routinely present consignments of certain risk goods for clearance that do not comply with the IHS requirements. They do this knowing that MAF will step in and require the importer to undertake the necessary treatment to ensure biosecurity risks are managed.
2. Some importers, and other parties in the supply chain that have the ability to manage biosecurity risks, focus solely on meeting the MAF published requirements for biosecurity clearance, rather than considering what they could be doing to better manage the risks associated with their import operation.

A more comprehensive approach would look at the system as a whole and the key parties involved to enhance biosecurity risk management. MAF aims to better encourage:

- importers to ensure that risk goods being imported into New Zealand are compliant with requirements specified in the import health standard;
- importers and other parties in the supply chain to take broader responsibility for managing the overall biosecurity risk posed by their goods, rather than just meeting the requirements for border clearance (while also not removing incentives for them to report suspected unwanted organisms or pests).

MAF's policy intention is to make importers and others involved with importing goods, or using risk goods with post-clearance requirements, more responsible for the risks that their goods pose and to make their obligations and liabilities clearer.

Option 5.1: Status quo (Non-regulatory operational management)

Over recent years MAF has undertaken significant efforts aimed at improving incentives for importers to better manage biosecurity risks. This has occurred through substantial internal work programmes and resulting changes to operational practice. For example, MAF is using profiling to identify highly compliant pathways and parties. These pathways are then subject to lower intervention rates. This saves time and money for importing industries at the border. If audits show these parties to breach compliance tolerance levels, however, they are then reverted to a higher intervention regime to ensure that biosecurity risks are appropriately managed. Under this option, these efforts will continue. Despite the significant non-regulatory efforts towards improving incentives for compliance, the lack of responsibility taken by importers remains.

Option 5.2: Amend the Act to impose obligations and require declarations (preferred)

MAF has considered various options around who could reasonably be expected to take greater responsibility in relation to the pre-clearance requirements for the importation of goods which pose biosecurity risks. The parties in the import supply chain have different roles, incentives and abilities to undertake biosecurity risk management. Three possibilities were identified for who should be subject to duties and requirements to make declarations: overseas exporters, logistics operators and importers.

MAF's analysis resulted in the decision that the duties would best be placed on importers and need not be applied to other parties. This approach is consistent with other examples where statutory obligations are applied to traders (importers or exporters).

Duties should apply for both pre-clearance and post-clearance requirements. Under this option, it is proposed to make a duty on any person who owns or is in custody of imported risk goods to comply with import health requirements (including any post-clearance requirements), to keep adequate records to enable tracking of the goods, to take all reasonable steps to ensure that documentation and information required by MAF when importing goods was full/complete and accurate, and not to abandon those uncleared goods during the border clearance process.

It is not proposed to make these duties directly enforceable of themselves. Instead they would serve to make responsibilities in the system clear and to contribute to establishing the duty of care element required for a successful common law claim. The proposed new Compliance Order mechanism would be able to be used to address situations where an importer has not complied with a duty, and this has created an undesirable risk at the border.

In addition, to support these duties, import health standards would be able to include the requirement for importers to make declarations about the goods that they are importing. These declarations would relate to the steps that the importer has taken to manage the risks that are created by the importation of the goods. The requirements for importer declarations would be accompanied by a new strict liability offence for a refusal to make a declaration, or for making an erroneous declaration. The strict liability offence could be prescribed as an infringement offence, so that it could operate in the same way as the existing infringement notice system for passenger declarations.

Improved clarity around the responsibilities of parties involved with the importation of goods should in itself improve compliance as people understand biosecurity risk better and what their role in the system is.

The imposition of duties should not have a significant compliance cost. Well over 90% of importers are considered by MAF to be compliant. The application of declarations will have an associated compliance cost, but again this is not expected to be significant.

Consultation

Stakeholders have generally indicated their support for placing obligations on importers and other key parties in the import chain. All agree that, for biosecurity risk management to work more effectively, it is no longer adequate to rely solely on the inspectors' intervention. Both domestic production industries and import industries have also shown strong support for improving MAF's ability to take enforcement action in the event of non-compliance.

Some stakeholders have questioned the appropriateness of making importers responsible for all IHS requirements up to the point of clearance. In light of this feedback MAF considers that a revised approach to the options orinigally proposed with stakeholders is preferred. As noted above, this approach would allow inspectors to issue Compliance Orders to remedy an importer's non-compliance with a duty, and use declarations to encourage compliance. This approach would not unduly load responsibility on importers, but still creates incentives for importers to carefully consider how the IHS requirements and risks created by their goods are being met in their particular situation.

Stakeholders have also indicated strong support generally for the creation of more incentives for compliant parties, as well as penalties for non-compliant ones. In response MAF has communicated the significant efforts that are underway operationally to provide incentives for compliance.

Implementation

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements that have been identified for these amendments.

The duties on importers would be able to come into effect immediately. Requirements to supply declarations would be able to come into effect once IHSs are updated and the templates for declarations have been prepared.

Operational plans will need to be made by MAF to ensure that parties are educated about their new responsibilities and to plan for auditing compliance and enforcement in the event of non-compliance with a duty or declaration requirement.

Inspectors and chief technical officers will also need training, and internal procedures will need to be updated to reflect the new legislative requirements.

Recommendation

The best way of improving clarity around responsibilities in the biosecurity system is to explicitly impose a series of duties on importers and as appropriate require them to make declarations in regard to to the steps taken to manage the risks that are created by the importation of the goods.

6. Options Analysis: Improve transitional facility arrangements

Transitional facilities provide an integral part of the clearance process for cargo. These facilities are used to hold un-cleared risk goods for inspection, secure storage or treatment until they receive biosecurity clearance, or are re-shipped or destroyed. Each facility has an operator who is approved by MAF and is responsible for all un-cleared goods upon arrival at the facility. Operators must have authorisation from MAF to receive, transfer to another facility, or re-ship goods from New Zealand. Transitional facilities enable efficient clearance of low-risk sea containers and are used to alleviate resource pressure on MAF.

6.1 Options for Improving the Approval of Operators

It is difficult for MAF to prevent unsuitable people from becoming approved operators of transitional or containment facilities, as the current approval system is strongly biased towards approval of operators (ie enabling provisions). Refusing approval is highly problematic, and places the burden of proof on MAF to demonstrate why an applicant should not be approved.

Option 6.1.1 – Status Quo

Under the status quo, the term ‘fit and proper person’ is not defined in the Act. This creates uncertainty for applicants who are not given specific guidance on what is required to become approved. In addition, under the status quo, MAF is not able to confidently refuse approval to those considered (based on their compliance history) to be unsuitable. Transitional facility operators have a privileged and trusted position in the biosecurity system, and MAF needs to have full confidence in those it approves as operators. However, the current situation leaves MAF open to challenge, and sometimes leaves it no choice but to approve unsuitable operators who potentially increase biosecurity risk.

Option 6.1.2 - Amend the Act to include a definition of “fit and proper person” (preferred)

This option would make the requirements clear and understandable to applicants. By having better control over who is granted authority to operate a transitional facility, MAF will have greater confidence that biosecurity risks are being managed, and be able to refuse approval operators who are known to increase biosecurity risk. Transparency around an applicant’s past biosecurity compliance history would increase MAF’s ability to keep known ‘offenders’ out of the system by relying on information it already has as part of its auditing system, and the knowledge and judgement of its inspectors.

No additional costs to MAF are envisaged; rather the proposed change should make the existing decision process simpler and remove much of the room for argument around the decisions made. However, MAF will need to ensure it is able to gather or provide any supporting information that may be needed to make a decision. This may entail a cost, depending on the criteria chosen. However, MAF already gathers and holds much of the information so additional costs (if any) should be minimal.

Consultation

There were no specific concerns expressed by Stakeholders on this proposal. A few felt that there was a fundamental problem of having too many operators in the system and that any improved control that meant that good people were in the system was an advantage and is supported.

Recommendation

MAF supports option 6.1.2 as a clear definition of "fit and proper person" would mean that both MAF and applicants understand what is required for an applicant to be approved. This will give applicants a better idea of whether or not they can expect to be approved as operators from the outset, potentially saving time and preventing wasted business costs. Applicants who clearly do not meet the criteria will then be aware that they will not be approved, and can find alternative businesses.

6.2 Options for improving clearance at transitional facilities

Low-risk sea containers go to a transitional facility where they are checked by a person accredited under the Act prior to receiving clearance. Accredited persons inspect these containers, as per MAF requirements, and if no contamination is found (the majority of cases) the accredited person releases the container to the importer, without the involvement of an inspector. Only where contamination has been found (e.g. live insect eggs) are accredited persons required to contact a MAF inspector who will take further action to manage the risk.

This practice does not comply with the clearance empowerments in the Biosecurity Act and is an *ultra vires* issue (ie outside the current law), so continuing with the status quo is not considered feasible. MAF has investigated a number of options to ensure clearance is given in an operationally pragmatic and legally sound way at transitional facilities.

Option 6.2.1 – Amend the Act to authorise facility operators to undertake certain actions

Transitional facility operators (rather than accredited persons) would be appointed to give clearance on low risk containers only when no contaminants are found. In all other circumstances, an inspector would be called in to take action and/or give clearance.

A number of criteria need to be met in order for clearance to be given and many would have been met prior to a low-risk container arriving at a transitional facility. At the transitional facility the check would be specific to ensure that the containers are free of contaminants. The

check would be performed by a person with adequate training – this could be the operator, or another person; but the operator would be the person responsible for the clearance.

This option achieves the desired outcome and reflects operational reality. Inspectors can not possibly check all containers at transitional facilities. It is more cost-effective for MAF inspectors to target higher risk goods and containers.

Operators may come under pressure from importers to process goods quickly. To address this risk, MAF is planning to implement appropriate training for transitional facility operators and to set up a verification system around transitional facility clearances.

If this option was progressed, MAF would need to clearly communicate that inspectors will be called if accredited persons/operators detect any contamination on containers in order to address this potential stakeholder concern. There will be greater transparency around how clearance is issued on low-risk sea containers through communicating exactly what is required.

Option 6.2.2 – Amend Act to allow electronic systems to clear low risk sea containers at transitional facilities only when no contamination is found

The legislation could also accommodate the use of an electronic system to issue clearance once the final checks at the transitional facility show the containers are free from contamination. As discussed under Option 6.2.1, a number of criteria for clearance have usually been met prior to the container arriving at the facility. Once the container is checked and no contamination is found, the operator would input this result into the database. The system would "communicate" that all requirements have been met and the container would be cleared when it exits the transitional facility. This is in line with other proposed changes to facilitate electronic clearances.

Although clearing goods electronically is not currently provided for by the Act, the electronic clearance of low risk goods is a pragmatic and resource-efficient means of managing biosecurity risk. This approach would ensure that resources, in particular inspector time, could be better targeted to goods that present a higher risk.

Someone at the transitional facility will need to enter information into the electronic system to state that the final criteria have been met. As in option 6.1.1, there is a risk that contamination would not be reported so that a container could be cleared without calling a MAF inspector.

Option 6.2.3 - Enable both options 6.2.1 and 6.2.2 so that either operators or electronic systems can clear low-risk sea containers when the containers meet the requirements

There are two reasons for allowing both options:

- Enabling electronic systems to clear containers at a transitional facility will require systems to be set up, which will take time. In the interim, operators can issue clearance so we are not acting *ultra vires*.
- Once electronic systems are up and running, there may be circumstances where the system is not functioning so we will need the operator to issue clearance.

Along with system set-up costs (there is an existing database operated by MAF which will probably offer a relatively low-cost option), there will be training implications. If operators are allowed to clear goods when an accredited person has found a container to be free of contamination, then they will require training to do so. If electronic systems are used, operators or another appropriate person will have to be trained to use the new system. Enabling both options means operators are not forced to implement electronic systems.

Consultation

There was no specific consultation feedback on this issue. The general feedback on border management is relevant though. Stakeholders want improved efficiency without compromising the quality of biosecurity risk management. This is essentially reflected in Objective 1 for the options analysis and so has been the primary concern for policy design.

Recommendation

Option 6.2.3 provides the greatest flexibility through providing short and longer term solutions. In addition, authorising operators to undertake certain actions legitimises the practices that are occurring now. MAF would also have a back-up system if the electronic system was down, as operators could confirm that all criteria had been met and provide clearance in writing.

6.3 Options for improving compliance management of Transitional Facilities

Option 6.3.1 – Status quo

At present MAF can only cancel an approval of a transitional facility and the operator's approval in the case of non-compliance.

Option 6.3.2 – Amend the Act to allow MAF to suspend a transitional facility's or operator's approval

This amendment would allow the suspension of approval to occur in cases of non-compliance. Suspension could usefully be applied in the following situations:

- where a facility is left without an operator;
- where a specific remedial action needs to be carried out before the facility is fit to operate; or
- as a compliance penalty.

Once issued with a suspension notice, a facility would temporarily lose the approval to carry out all or some of its biosecurity activities, as specified in the notice. The suspension notice would specify a period of suspension, and, if applicable, specific actions to be carried out and/or conditions to be observed. Once MAF had carried out an audit to satisfy itself that the non-compliance had been addressed and risks were being appropriately managed, it would be able to lift the suspension. MAF would lift the suspension through a written notice, which

would allow the facility to resume some or all of its biosecurity activities as specified in the notice.

Consultation

One transitional facility operator has spoken directly to the need for fair and equitable treatment of operators by MAF. This is a matter that can be met by the preparation of MAF guidance material to assist MAF officers in their decisions to manage non-compliance.

Recommendation

Option 6.3.2 provides the greatest flexibility for MAF to take action with respect to non-compliances observed with transitional facilities and approved operators. It provides opportunities for remedial action by the participating parties before the final step of revocation needs to be taken. Suspension is likely to be a lower compliance cost than cancellation and re-approval.

MAF will incur some additional costs through the preparation of suspension notices and audit, but this can be cost recovered within existing baseline funding.

Implementation – for all amendments relating to transitional facilities

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements that have been identified for any of the specific amendments in the suite of changes.

MAF will need to ensure transitional facility operators and potential operators are informed about what is required for them to meet the new approval criteria so they know what is expected of them, possibly in a clear policy statement on the website or as part of the application form.

The operational arrangements for implementing the improvements to the clearance processes at transitional facilities will involve the establishment of the electronic system that would enable the completion of clearance to be achieved at these sites. There is an existing database which is only used in a limited way at present, and this would need to be assessed to confirm that it provides the required functionality. It is not anticipated that significant changes to this system would be required. However, improved training for approved transitional facility operators would need to be developed and implemented, along with associated instruction manuals. In addition, MAF would need to ensure that giving the authority for operators to undertake a final step in clearance is linked to a means of ensuring compliance.

7. Options Analysis: Improve Agency Cooperation

MAF inspectors sometimes encounter items that may be of interest to other government agencies such as Customs, DOC, Ministry of Fisheries, and the New Zealand Food Safety Authority (NZFSA). For example, while inspecting frozen fish to check for compliance with

import requirements, including any requirements set by NZFSA) a MAF inspector may find illegal drugs hidden within the fish.

In a few specific cases MAF inspectors are warranted with powers under other legislation that allow them to deal with goods in certain ways. But the generally inspectors have no express power to allow them to manage items that may be of interest to other agencies or which may be evidence of an offence under other border-related legislation. Pragmatically, it is in the interests of New Zealand's wider border security that MAF inspectors be able to manage these goods. This approach supports the New Zealand's border agencies working together to ensure security at the border.

Option 7.1 – Status quo

It will also retain the risk that the Courts will interpret actions taken under the current legislation as 'not reasonable', and the potential for prosecutions to fail.

Option 7.2 – Amend the Act to allow certain persons with powers under the Act to manage goods and documents they suspect may be evidence of an offence under other legislation (preferred)

This amendment would include creating powers for inspectors to detain both accompanied and unaccompanied goods. The change would mean that MAF can continue to assist other government agencies to detect offences at the border under the legislation they manage, but in a way that does not expose MAF to the *ultra vires* risks presented by the current "back door" practice.

Legislation change would also ensure that border agencies are working in New Zealand's best interest to manage potential risks entering New Zealand where they may impact human health, economic, environmental and socio-cultural values. These impacts have not being quantified, but they have the potential to be significant.

Consultation

There was no specific consultation feedback from stakeholders on this issue, but there is general support for improving alignment, reducing dual/multi regulatory requirements and better enforcement.

Implementation

At this stage of the legislative and operational analysis, there are no legislative transitional arrangements that have been identified for this amendment. Systems and supporting operational manuals will be required to be prepared. There will be some associated training but in the main this change will reflect current practises.

Recommendation

Option 7.2 is consistent with the Government's and MAF's push for improved inter-agency operability and government efficiency at the border, and with the Memorandum of

Understanding between MAF, DOC, MFish and NZFSA on Biosecurity which aims for biosecurity agencies to act collectively in New Zealand's best interests.

Changing the legislation would incur potential costs for greater training requirements as MAF would be obliged to ensure persons with these powers are trained to understand and be able to apply those new powers. However resource implications are likely to be low overall as MAF already effectively does some training of inspectors on what goods are of interest to other agencies.

8. Options Analysis: Improve import health standards (IHS)

8.1 Options Analysis for Outcome Statements

The problem is that the empowerment for IHS in the Biosecurity Act does not explicitly enable the development of an IHS without the inclusion of specific mitigation measures.

MAF's policy intention is that the outcomes for managing the risk of imported goods are as clear as possible to both importers and other interested stakeholders. IHS should allow for inclusion of an outcome statement and for there to be no mitigation measures where this is most appropriate.

MAF considers that that best way to make the desired outcome explicit to stakeholders is to include an outcome statement in import health standards where possible. Where necessary, MAF would also include mitigation measures that would acceptably meet the standard. However, it may be possible/preferable for some import health standards to include only the outcome and no prescribed methods. Where this approach is taken, the specific measures that set out how an outcome statement could be met could be published by MAF – but not as a legal instrument.

Option 8.1.1 – Status quo

Currently IHS generally specify the mitigation measures that must be applied for a consignment of risk goods to meet the requirements of that standard. While these mitigation measures give an implicit indication of New Zealand's 'appropriate level of protection' for those goods (i.e. what outcome must be achieved in order for them to be compliant), the outcome desired by MAF is not explicit. Under this option the policy outcome cannot be achieved as mitigation measures must be included.

Option 8.1.2 – Amend Act to make it clear that an IHS may include a statement of outcome, and that an IHS does not need to include explicit mitigation measures.

The only feasible option for enabling an IHS to contain only a statement of outcome is to amend the empowerment section in the Act. It is widely agreed that being explicit about what outcome is required has clear benefits to both the organisation and stakeholders. The drivers for import health standards that include outcome statements are to:

- foster more innovative risk management;
- appropriately align resource to different levels of risk.

MAF aims to give importers and supply chain partners greater opportunity to comply in as efficient a manner as practical by making it clear what outcome is sought, rather than imposing a standard treatment measures that must be followed. The use of a statement of outcome means that importers have a more informed basis for considering whether an alternative treatment measure may work better for them. They can readily assess the feasibility and costs of an alternative treatment measure and make a business decision about whether to pursue approval for an alternative measure or not.

A concern expressed by some stakeholders was that the smaller import operations will not have the expertise to determine how best to meet an outcome statement. Their preference is for MAF simply to set out what is required in terms of treatment and they will see that it is done. MAF recognises that it may be more cost-effective for some stakeholders to simply follow the mitigation measures MAF makes available, to allow them to meet an outcome. The enabling of an IHS that includes only an outcome statement will be supported by the publishing of information that sets out how (in one or more ways) an outcome might be achieved. This information would be non-regulatory, but so long as it was followed, then the operator would be confident of meeting the applicable import health standard.

An amendment to explicitly provide for IHS to include [only] outcome statements would be beneficial for the avoidance of doubt and reduce the risk of a legal challenge.

As IHSs are developed they need to provide clarity to all users and stakeholders about what is required, including:

- importers – to know what is required of them in order to import goods successfully;
- overseas exporters – so they can send compliant goods and the required documentation;
- MAF inspectors – to know what the import requirements are and can decide if the goods comply; and
- stakeholders – so that they can constructively engage with, and have confidence in, how MAF manages biosecurity risk at the border.

To ensure that MAF provides the necessary transparency/clarity, internal guidance would be developed to outline a process for writing outcome statements. This will ensure that domestic and international requirements related to transparency, consultation and acceptable level of protection are satisfied. Compared with the status quo, there would be some additional business costs to MAF (e.g. writing supporting material and approving alternative measures) but these should be able to be absorbed into existing baseline funding levels. Additionally, there may be more demand on MAF frontline and head office staff to explain how to meet the outcome, and what the importer may need to do to prove the technical validity of the alternative measure they propose.

It will be important to monitor the resources needed to manage implemented import health standards as the new border system is rolled out.

8.2 Options to improve making an import health standard

Import health standards are issued by the Director-General of MAF on the recommendation by a chief technical officer (a statutory position). In making a recommendation a chief

technical officer must be satisfied that that the statutory criteria are met. Operational experience indicates that the criteria can be improved on the following two points:

- By distinguishing what criteria must be considered for all IHS and what may be considered when applicable; and
- By being clear about the criterion in relation to considering international obligations, in particular when considering the *Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)* which sets out the fundamental obligations that apply to the development of each and every IHS.

The international agreements provide the rules for managing biosecurity risks associated with traded goods and guide precautionary actions when managing risks to the environment. The agreements require governments to ensure that any measures imposed are feasible, cost-effective and non-discriminatory.

A principle of both the New Zealand Government's *Code of Good Regulatory Practice*, and its recent statement on "*Better Regulation, Less Regulation*" is that government agencies making regulatory decisions (for example, issuing IHS) must explicitly consider costs and need to achieve their objectives.

Option 8.2.1 – Status quo

These principles would suggest that the status quo is providing inadequate criteria for guiding the making of IHS. While the criteria are inclusive and thus are not limiting the consideration of broader criteria, the omission of criteria that are used on the face of the Act does not provide for consistency or transparency of process.

Option 8.2.2 – Amend Act to expand the matters to be considered when recommending the making of an IHS

Such matters would include:

- the efficacy of applying the measures (this refers to the degree to which an option for managing risk reduces the likelihood and magnitude of adverse consequences);
- the feasibility (including direct costs) of the measures (this covers the technical, operational and economic factors affecting the implementation of risk management options - the direct cost to importers and government is a component of feasibility); and
- achieving consistency with the SPS Agreement.

The *Vienna Convention on the Law of Treaties* indicates that where there is a binding international obligation this is required to be honoured. The SPS Agreement is such an obligation applicable to all IHS and should be explicitly recognised. Expert legal advice has been sought from Parliamentary Counsel Office in regard to the options for referencing the SPS Agreement and these will inform drafting.

The SPS Agreement provides the rules that allow World Trade Organisation (WTO) members to manage risks to human, animal or plant life or health that may arise from importation. Breaches of the SPS Agreement can be investigated through the WTO Dispute Settlement Body and continued non-conformance would lead to compensation or retaliation being

authorised by the WTO. The reputational implications of any non-compliance on the part of New Zealand could also be very significant in terms of market access.

The expansion of criteria may create more demand on MAF risk analysts as process requirements would need to match the statutory criteria. The overall impact is not expected to be significant though as the amendment will essentially be making explicit what is already being done. At this stage, there is no expectation that additional resources will be required.

Another impact could be that transparency could be argued to increase the likelihood of legal challenge from importers who are disgruntled by the requirements of a particular IHS. MAF considers that while this could be the case, that good internal processes will mitigate against this risk/cost.

Consultation

In general there has been wide support for the improvements proposed for IHS. When consultation started on the way to improve the making of IHS, the focus was primarily on the need to be transparent around assessing the direct cost of any proposed measure. As a result of feedback from the two consultation rounds the policy was broadened to its current scope. In the second consultation round one concern was that New Zealand is unique and so the application of any particular aspect/principle of an international treaty may not be relevant.

In regard to the use of outcome statements in IHS, large importer interests have supported the use of outcome statements, however smaller businesses have been more reserved. Smaller importers do not have the resources to design/validate treatment methods – they just want MAF to tell them what needs to be done to manage the biosecurity risk at the border. Not providing mitigation measures could make it difficult to achieve consistent and effective biosecurity management. In response, MAF is clear that either an IHS will include mitigation measures, and if not, that these will be provided in associated guidance – which ever is most appropriate.

Implementation

Inspectors and chief technical officers will need training, and internal procedures will need to be updated to reflect the new legislative framework. This may take several months to achieve full effect – particularly where decisions/judgement calls will likely take some time for experiences to build operational confidence. An example is in the clarity of the relationship between inspectors and the chief technical officer. To review and update the entire suite of existing IHSs will take many years.

The enforcement provisions in the Act will need to be updated to accommodate the changes in the IHS area.

Recommendation

The only feasible option is to amend the empowerment section for import health standards to make it clearer which matters are considered by a chief technical officer when recommending the making of an import health standard (option 8.2.2). MAF wants to improve transparency

around the criteria used when making decisions in IHS and to ensure improved consistency in how those criteria are applied.

To explicitly include more fully the criteria that MAF is applying to the recommendation for making an IHS will provide for improved transparency for stakeholders. This will assist with engaging in meaningful consultation and should improve the overall quality of import health standards.

9. Options Analysis: Insert a standard for craft

Craft (aircraft and sea going vessels) can carry a range of organisms that could harm New Zealand. For example, aircraft may carry insects in their cabins or holds, and ships may carry seaweeds attached to their hulls or moth egg masses on their superstructure. New Zealand needs to manage the biosecurity risks associated with craft the country.

The problem is that the Biosecurity Act assumes unwanted organisms are associated with a "risk good", not craft. While a craft can harbour a risk good, the craft itself cannot be a risk good. Accordingly, an IHS cannot be specifically issued to manage craft.

Further, an IHS must manage a class of "risk goods" that presented the same level of risk, thus they cannot be applied to craft in a generic way because the risks associated with craft pose different levels of risks.

Option 9.1 – Status quo

Some specific contaminants associated with craft are managed through different tools under the Act now. For example, contaminants present in ballast water or wooden packaging material are managed using two separate IHSs specific to each of those risks. On the other hand, the cabins of aircraft arriving in New Zealand are disinsected using powers of inspectors.

The development of some of these requirements is of legal concern as the tools used were not specifically intended for application to craft. Furthermore, because MAF is trying to force-fit management of craft into the Act a confusing and onerous collection of requirements ensues that is not making sense to inspectors or craft operators. This approach is inconsistent with Government's strategy for fewer and better regulations.

In summary, option 9.1 does not achieve the objective of effective and efficient management of biosecurity risk.

Option 9.2 – Status quo with guidance material

In addition to 9.1, a guidance document could be developed to sweep together all the present requirements into a single document and made available to inspectors and operators of craft. Such a guidance document would have no legal status under the Act but would consolidate and be able to clarify the requirements. Such a document may assist to lessen the confusion, but of itself it does not address the fundamental problem that the Act does not have a tailored way of setting standards for craft.

Option 9.3 – Use regulatory powers to set requirements for craft

Regulations require Cabinet to agree to any proposal and need to be made by the Executive Council. Section 165 of the Act enables regulations to be made for various purposes including prescribing technical standards for constructing, equipping, maintaining and operating places (places includes craft) that can harbour pests or unwanted organisms. These regulations could be used to impose requirements on craft in terms of hull cleanliness or treatment of biofouling/other risk goods.

Overall, the technical nature of requirements for managing craft as vectors of biosecurity risks, and the likely need to change the requirements frequently and quickly means that regulation is not the best option. This option does not meet the objective of having streamlined activity. Also, it is observed that the management of risk goods is by way of import health standards (a tertiary instrument) therefore the use of a tertiary instrument to manage the risks associated with craft would be consistent with the construction of the Act.

Option 9.4 – Amending the Act to specifically allow an IHS to cover requirements for incidentally importing one or more risk goods vectored by craft

This option proposes amending the Act to clarify that an import health standard may specify the requirements to be met to effectively manage the risks associated with organisms that are attached to craft or associated with craft. The policy intent is to have one standard for certain types of craft that brings all the existing separate requirements together.

This option could possibly meet MAF's objectives regarding effective biosecurity management to a degree, but it still ends up with a tool that is not really fit for purpose for application to craft because IHS are designed specifically to relate to a particular "risk good" or class of "risk goods" and not to the craft. Full benefit capture is not likely.

Furthermore this option leads to a lack of distinction in regards to clarity of process – this means this option is counter to the objective of achieving clarity of roles and processes.

Option 9.5 – Amending the Act to include a specific tertiary level standard for managing biosecurity risks associated with craft (preferred)

A new "craft risk management standard" would provide a tailored tertiary instrument that would set out appropriate administrative requirements such as justification criteria and consultation – these would be similar to those for recommending the making of an IHS. Craft operators would be required to make declarations that they have complied with the requirements of the craft risk management standard.

This approach meets the applicable objectives, and would be consistent with the design of the Act. It explicitly recognises that craft, as conveyers of passengers and imported goods, can also be vectors of biosecurity risks themselves. This option also leads to clarity for inspectors and craft operators because a standard for a type of craft will contain all that is necessary for biosecurity risk management. As a consequence, the various standards and directions now in place will be progressively repealed as the new craft standards are made.

The biosecurity risks associated with harmful organisms that can be in or on craft are being managed to some degree under the Act now. But MAF is very aware the range of tools employed does not give as comprehensive and effective risk management as is warranted for New Zealand's biosecurity management.

The benefits of preventing a biosecurity incursion have not been quantified but the impact in terms of economic, social, environmental and cultural values associated with the marine or terrestrial environment could be substantive. Further, once new organisms are established in New Zealand they are difficult and expensive to control. Option 9.5 would provide the best legal platform to enable risk management of craft coming into New Zealand.

Option 9.5 will provide a tailored regulatory process for the assessment and making of craft requirements, and provide greater legal certainty and clarity compared with the likely difficulty in trying to amend import health standards to have them accommodate craft when they were not designed for this application. The result will be improved regulation by MAF, and clarity for inspectors and craft operators.

Improving the empowerment provisions for the management of craft will provide greater legal certainty and thereby reduce/remove the likelihood of legal challenge due to the risk of a requirement on craft being *ultra vires*.

As mentioned there are existing biosecurity risk management requirements in place now. The new provision of "Craft Risk Management Standards" will give rise to more comprehensive coverage of craft, but it is likely that for many already regulated the actual operational impact of a new standard in terms of compliance costs will be nil or minimal.

For those craft operators not currently regulated there will be compliance costs as craft operators will need to comply with new requirements – but all new requirements will be subject to consultation and where appropriate requirements will be outcome based thus allowing operators to determine what are for them the most cost effective way of meeting the requirements.

Consultation

For the establishment of standards to manage craft, this was an area that received a reasonable amount of stakeholder feedback. Stakeholders want to see New Zealand biosecurity standards mesh with international standards/conventions where possible. There were also a number who questioned the intended application/use of the standards and practicality issues such as enforcement, particularly in remote places. Initially consultation explored the potential application of "Craft Risk Management Standards" to coastal craft movements, not just arriving craft.

All comments arising from the workshops and submissions were recorded and considered as part of MAF's option analysis. These comments have informed the amendments proposed, the nature of the amendment has been adjusted in a few cases and the proposed detail of these and other amendments has been refined.

Implementation

No transitional arrangements will be needed for new "craft risk management standards" as when they are put in place, any existing requirements that are made redundant as a consequence will simply be repealed. All new standards will be subject to consultation, and this will include discussion of efficacy and feasibility (including direct costs) of measures. In addition, the use of outcome statements will enable operators to seek the most cost-effective way for them to meet the standard.

The enforcement provisions in the Act will need to be updated to ensure that non-compliant actions in this area are addressed by making the new "Craft Risk Management Standards" subject to appropriate offence and penalty provisions.

Recommendation

To fully capture the benefits of comprehensive biosecurity risk management, to provide for legal and technical clarity, option 9.5 provides the best solution and also provides the best platform for ease of use for craft operators and inspectors.

B: Options to Improve Pest Management

Established pests have the potential to cause significant impacts to New Zealand's economy, environment and human health. The direct financial costs of pests are estimated at $1.3 billion [5]per year or the equivalent of 0.73% of gross domestic product. There are additional environmental and socio-cultural impacts that are difficult to estimate. Government agencies and other participants in the biosecurity system spend $970 million per annum directly managing pest impacts, including quarantine and border control costs, surveillance, research and pest control.

The pest management system is complex, due to the biological nature of pests and the differing impacts they have. There are many parties involved in managing pests, including central government agencies, regional councils, industry groups, Maori, non-Government organisations, landowners and the public. These participants carry out a range of pest management activities, to protect a range of economic, environmental, human health and socio-cultural values.

Under the current system pests are not always managed in the best way, in other words:

- some pest management is not happening when it should;
- some pest management is happening when it is not needed;
- some pest management is not as effective as it could be; and
- some costs are not fairly distributed.

In 2008, MAF and regional councils commissioned separate reports on the future of pest management, to assess whether the current system is fit for purpose for the challenges ahead.

Overall the reports found that New Zealand's pest management systems are well advanced but identified the following areas for improvement:

- pest management roles and accountabilities are not clear enough;
- Crown obligations as a 'good neighbour' landowner do not match those of other parties;
- the legislation underpinning pest management activities is outdated;
- physical control and monitoring tools are insufficient for future needs; and
- collective action and participation is insufficient.

Key agencies, industry and Maori have been working together to address these problems. The *Plan of Action* aims to ensure pest management systems are fit for purpose for the next 25 years. It captures all of the proposed legislative and non-legislative changes needed to do this. The improvements to the pest management system will not result in sweeping changes to the way things are done currently, but will have a big impact longer term.

Although the proposals may result in additional regulation, the intention is that this regulation will be more robust and reasonable, and overall less costly than existing regulation. Most of the regulatory proposals are to guide how the regulators undertake their activities, rather than directly imposing greater regulation on the public and businesses.

[5] A recent study [*Economic Costs of Pests to New Zealand, Nimmo Bell, June 2009*] investigated the total economic cost to be in excess of $2 billion per annum.

The legislative changes below are described further in the following sections:

1. better tools for collective action
2. Crown landowning agencies' participation in regional pest management
3. ensuring timely decisions
4. clarifying roles in pest management
5. other legislative changes.

There are other options that could have been implemented through regulation, however non-regulatory options were chosen instead. These include the establishment of a "toolbox manager" for the biosecurity system and a committee to improve engagement with Maori. These proposals are not discussed further in this paper.

Assessment of pest management amendments vs objectives

This table sets out a summary overview of how the preferred option for each of the specific amendments measures up in terms of the objectives and therefore also in terms of the degree (low, medium or high) the benefits will be realised.

	Objective 1 Effective and efficient management of biosecurity risks	Objective 2 Clarity of roles and responsibilities	Objective 3 Ability to handle future change
1. Better tools for collective action	High - greater flexibility in developing pest management strategies.	Medium - the processes for developing pest management strategies would be clear and communicated. Industry and non-Government groups will be able to use pest management strategies more readily.	Medium - the tools will be sufficiently flexible to adapt.
2. Crown landowning agencies' participation in regional pest management strategies	Medium - regional pest management will not be undermined by Crown land management agencies not meeting strategy rules.	Low - the Crown will be more involved in developing regional strategies, and councils will be more likely to take issues and concerns into account.	
3. Ensuring timely decisions	Medium - the determination of a lead agency will prevent 'non-decisions' and help ensure that pests are considered in a timely way.	High - lead accountability for pest issues will be clearly allocated to one party.	Medium - the allocations can take changing circumstances into account.
4. Clarifying roles in pest management	Medium - less delay in determining roles may help to facilitate more rapid responses.	High - parties will be clear on their role and how they fit within the system.	
5. Other legislative changes	Medium - barriers to effective pest management will be removed.	Low - a clearer purpose will improve clarity for participants	

1. Better tools for collective action

National and regional pest management strategies established under the Biosecurity Act provide a mechanism for communities to agree on the control of pests (or sites / pathways where such pests might be prevalent) that are important to them. The strategies balance property rights by setting rules that specify rights and obligations of those parties to which they apply. But:

- there are inconsistencies between different regional councils' management of pests and approach to analysis;
- Crown landowning agencies do not fully participate in regional pest management;
- there is a lack of flexibility in the process for developing and reviewing pest management strategies; and
- there is an inability to manage the movement of risk goods and craft within New Zealand.

The result is that pests are not always being managed in the most effective or efficient way.

Option 1.1: No legislation reform, but increased support and involvement from central government

This option would involve working within the existing legislative framework, but central government taking a greater role in supporting industry and non-industry groups to use pest management strategies. This option could be implemented immediately and would support agency and industry co-operation.

However, the legislation would still present barriers to effective pest management, particularly in relation to national pest management strategies and managing the movement of risk goods and craft within New Zealand. National pest management strategies would be more costly to implement than necessary, both for central government agencies and industry groups.

Limited flexibility around the development and review of regional pest management strategies, to respond to changes in the environment, will continue to impact on the effectiveness of pest management in the region.

Option 1.2: Amend the Act to provide national direction and allow the tools to work as they were intended (preferred)

This option would involve various amendments to the Act to provide greater national direction for both national and regional pest management strategies, and more flexible and effective regulatory tools for collective action on pests. The proposed changes will result in better value for money, as all pest management strategies will be of a similar high standard. There are clear benefits to central and regional government, as the process to develop a pest management strategy would be more streamlined, and pest management strategies would be more flexible. Allowing pest management strategies to be in place for up to 10 years will result in savings of resources and time to regional councils and other parties with pest management strategies in place.

Streamlining the process for developing a pest management strategy will enable private individuals and groups to more readily use a strategy for collective action on a pest. This will allow them to reduce their costs overall, and ensure that the pests are being managed by those best placed to do so.

Allowing changes to be made during the term of a pest management strategy without being required to review the whole strategy will help ensure the right pests are being managed, in the right way. Ensuring greater consistency between regions in their approach to analysis and the terminology used for pest programmes will make it easier for landowners, businesses and other organisations that work across different regions to engage in the development of pest management strategies, and implement their requirements.

National policy direction

It is proposed that national policy direction is developed to ensure that pest management strategies are robust, consistent and mutually supportive. This would ensure that national priorities are clearly signalled and that better regional strategies are developed over time. The national policy direction would cover:

a. principles for when the government should intervene;
b. principles for who should fund what;
c. principles for pest management decision-making;
d. national priorities for pest management;
e. a process for determining what should be in national and regional pest management strategies and whether a pest meets the criteria under the Biosecurity Act;
f. mandatory criteria and methodologies to be used for cost benefit tests and other tests of programme value and how to set good neighbour obligations;
g. consistent names for pest programmes with the same objectives; and
h. the information to be provided to support a shared performance measurement framework.

The national policy direction would need to be publicly consulted on before it is finalised and approval sought from Cabinet. All national and regional pest management strategies would be required to be aligned with the national direction.

The exact mechanism(s) for providing national policy direction has not been determined, however it is likely to be through regulations issued under the Act. It is proposed that the Biosecurity Act is amended to provide for national policy direction to be issued.

More flexibility

It is proposed that the Act is amended to allow for more flexible pest management strategies, by:

- amending the provisions for the Minister and regional council to provide greater discretion on whether and how a proposal is publicly notified, who should be consulted and how, taking into account the number of people affected by the pest management strategy, the scale of impacts of the pest and the strategy, and the level of support from those affected;

- allowing the Minister and regional council discretion over whether to hold an inquiry into a proposed pest management strategy. They would not be required to hold an Inquiry, but may do so if they consider that the issue is significant and/or a significant body of persons oppose the strategy. If an inquiry was held a board to oversee the investigation would be appointed;

- allowing for rules to be added or removed from a pest management strategy without requiring a full statutory review of the whole strategy;

- allowing for partial implementation of regional pest management strategies where some aspects are being contested through the Environment Court; and

- amending the requirement for a full statutory review of a pest management strategy from five years to 10 years, or at an earlier date if specified in the pest management strategy.

Managing the movement of risk goods and craft within New Zealand

Pests can be spread between places through human activity. For example, moving aquaculture equipment without cleaning can inadvertently introduce pests to the new location/waterway. The tools in the Act assume that a pest will be managed once it has arrived in an area and is causing damage. A more proactive way is to manage the way that harmful organisms (known and unknown) spread into new areas. This is similar to how MAF manages the movement of risk goods into New Zealand via its IHS or import rules.

Border controls reduce risk rather than eliminate it entirely. It is therefore inevitable that some harmful organisms will get through. If proactive pathway management is in place, there are increased opportunities to limit the impacts of newly arrived harmful organisms and increase the chance of being able to manage or eradicate them by slowing their spread around New Zealand.

Secondly, there are a large number of high impact pests already present in New Zealand that are not in their full range of possible environments. Managing generic pathways increases opportunities to limit the spread of established harmful organisms and their impacts.

It is proposed to amend the Act to establish a new instrument to regulate activities and access powers to control pathways, including the potential creation of "internal borders" for specified activities within New Zealand. The process to develop these instruments will follow a similar process to developing a national pest management strategy, which involves a risk / cost-benefit analysis, appropriate consultation on the proposal, and a public hearing (if required, given the effects, scale or nature of the proposed controls).

It is intended that these instruments would not be used for all potential ways that organisms can be spread throughout New Zealand, but instead used to target specific high-risk pathways. For example, we might wish to protect the Chatham Islands from new marine pests via vessel movement controls.

It is proposed that these instruments are regulations that can apply nationally or in a particular regional area only. They could cover movement of any risk goods / craft, or particular types of movement along risk pathways.

Consultation

There is overwhelming support from stakeholders on the proposals to amend the Act to ensure the tools work as they were intended, especially those to improve flexibility and allow the management of risk goods and craft within New Zealand.

Implementation

The national policy direction will be developed through the Future of Pest Management implementation programme. It will be developed collaboratively with Crown land

management agencies and regional government and would need to be publicly consulted on before approval sought from Cabinet. Progress on the development of the direction will be reported back to Cabinet by October 2010.

A 'User's guide to pest management strategies' will be prepared to provide those strategies with clear advice about what can be done using pest management strategies and how they are developed. This does not currently exist and there is misinformation among users about how strategies can be used.

2. Crown landowning agencies' participation in regional pest management strategies

The Crown is not required to meet regional pest management strategy (RPMS) rules, unlike other landowners. This undermines the effectiveness of regional pest management strategies and willingness of some landowners to participate, particularly since the Crown is the largest landowner in many regions. This situation has caused escalating tensions between the Crown, and regional councils and landowners over many years.

In 1995, Cabinet agreed in principle that the Crown should contribute to regional pest management strategies where pests on its land cause external costs to other land holders [Cab Min (95) M 14/5 refers]. In 1998, the government therefore voluntarily allocated funding (now a total of $4.2 million per year) to DOC and LINZ, as the major land-managing agencies, for this purpose. Other agencies, including Defence, NZTA, Department of Corrections, Ministry of Justice and Ministry of Education contribute to pest management that meets regional pest management strategy obligations to varying degrees.

DOC and LINZ work with regional councils to determine how to best use the available funding. However, the appropriations are insufficient to fully meet all applicable regional pest management strategy rules.

The estimates for DOC and LINZ only to fully meet existing regional pest management strategy rules vary considerably, and it is very uncertain what future costs would be:

- Regional councils estimate the total current cost at $5.5 million per year (with a shortfall of $1.7 million per year).
- In comparison, DOC and LINZ estimate the total cost at $10.6 million per year, with a shortfall of $6.4 million per year (including indirect overhead costs).

There are no estimated costs available for other potentially affected Crown land management agencies, which may also have increased costs, but:

- New Zealand Defence Force spends $2 million on pest control for their own land management objectives, and considers that they would need to spend a small amount more than this to meet current RPMS obligations.
- DOC, New Zealand Transport Agency and MAF Crown Forestry already try to act as if they are bound with RPMS obligations, but may have some increased costs to fully meet current RPMS obligations.

The true costs and implications of RPMSs will only be known once national policy direction has been developed and regional pest management strategies have been aligned with this, as discussed in section 1 above.

Option 2.1: Status quo

The Crown is not bound to RPMS (unless it agrees to be bound by Order in Council).

In practice, DOC and LINZ would contribute to RPMSs through their RPMS allocations which would provide a fiscal cap, rather than binding itself to agreed pest management programmes by Order in Council. In addition DOC's and LINZ's own pest control activities may also meet RPMS objectives. There would be no new funding required, unless Crown agencies decided to seek new funding through the annual Budget bid appropriation process to cover the shortfall in funding required to meet RPMS rules. Crown land management agencies would work with regional councils to agree what to spend available funding on.

This option enables Cabinet to determine how to allocate its funding across the biosecurity system, and for Ministers and agencies to determine their land management goals and priorities.

The risks of this option are that the effectiveness of local programmes within regional pest management strategies, and the willingness of other landowners to participate, may be reduced, particularly since the Crown is the largest landowner in many regions. The situation has caused escalating tensions between the Crown, regional councils and some landowners over many years. Regional government may also reduce its support for biosecurity / biodiversity activities in general because the current dual system (the rules for Crown land management agencies owners are different than those for other land owners) undermines the effectiveness of the regional strategies.

2.2 Option 2 (preferred): Crown is bound to regional pest management strategies

Crown land-managing agencies would be required to control pests on its property to the extent necessary to fully meet rules in regional pest management strategies relating to being a "good neighbour"—primarily rules which seek to manage the spread of pests on Crown land that are causing external costs to other landholders. New costs would have to be met either through budget bid appropriations, or through reprioritisation of agency baselines. The Crown would not be required to contribute to an RPMS programme solely on the basis that the Crown would benefit from it; nor to contribute to the research, surveillance, public awareness or administrative activities (monitoring, inspection, enforcement) done by Councils.

This would primarily affect land managed by DOC and LINZ, but also land managed by the Defence, Department of Corrections, Ministry of Education, Ministry of Justice, MAF Crown Forestry and the NZTA. Binding the Crown would not affect land of the Crown that is under lease or license (e.g. LINZ pastoral leases, Crown forestry) or managed by others (e.g. reserves managed by Boards); or other Crown entities or SOEs. In each of these cases, the entity, State Owned Enterprises, leasees, license-holders, and land manager is already subject to RPMS rules.

The option would improve Crown-council relationship, and the Crown's engagement in regional pest management work and lead to more efficient and effective activities over time.. The main benefit would be to reduce pest spread to neighbouring farms. Councils are also more likely to contribute their discretionary funding to the pest management system if they consider the Crown is contributing fairly.

Some Crown land management agencies agree with the principle that the Crown should be bound but are concerned about the potential unknown fiscal costs of complying with new RPMS and the impact it would have on Crown priorities.

There is a trade-off between local pest management and other Crown-funded pest management activities (the Crown spends about $200 million across the pest management system, including on oversight, national programmes, regional programmes, biodiversity protection on Crown and private land, and pest-related research), and other outcomes delivered by the affected agencies (such as biodiversity protection, defence activities, and roading). The risk to the Crown is a reduction in these various activities and outcomes to fund meeting greater RPMS requirements. Crown agencies are also not able to manage their risk.

As outlined above, it is proposed to develop national policy direction on the content and process of RPMS. This is the key vehicle for managing the fiscal risk. The national policy direction would ensure that the development of RPMS follows a consistent and robust process, so that we are managing the right pests in the most efficient and effective way. This will prevent funding being diverted from higher to lower priorities, and better align national and regional priorities.

The Crown would be bound only once RPMSs have been reviewed to align with the national policy direction. Agencies would be expected to engage in RPMS development. Where a strategy rule is not aligned with the national policy direction, it would be of no effect. For regional strategy rules, there would be an ability to contest this through the Environment Court.

Engagement between agencies and councils could potentially be driven through Ministerial directives, or by Chief Executives through the Biosecurity Central-Regional Forum, or by an amendment to the Act requiring councils to consult with Crown agencies affected and take their matter raised into account.

An alternative to the Environment Court

Providing the Minister for Biosecurity with a power to veto was considered as an alternative to the Environment Court. This would mean a Minister for Biosecurity could veto individual pest management strategy proposals where proposals do not provide a net benefit or where a proposal would adversely affect pest management system priorities.

Regional councils do not support a Ministerial veto as it is considered a blunt tool and results in uncertainty about whether the Crown will buy-in or not. This alternative has been discarded because it was seen to undermine regional communities' ability to determine their regional priorities.

Option 2.3: Crown is bound to regional pest management strategies (as for Option 2), but with a fiscal cap in the national policy direction

The national policy direction will not fully mitigate the fiscal risk to the Crown from being bound by RPMS. Ministers could decide to either: use revisions of the national policy statement or direct engagement with councils to mitigate these risks over time – or have a "fiscal cap" set in the statement itself to remove this risk entirely.

MAF considers that a fiscal cap is not an appropriate way of managing financial risks and ensuring robust pest management occurs because it is likely to result in similar problems to the current state and means that Crown agencies have little incentive to engage in development of regional pest management strategies. Regional councils are likely to strongly oppose such a cap.

Crown financial accounting mechanisms

The funding allocations for meeting RPMS could be managed by MAF in a non-departmental output class in Vote: Biosecurity or in an output class in each respective agency's Vote.

Holding the funding in each agency's Vote strengthens the incentive for Crown land management agencies in engage in the RPMS development process and provides greater transparency of the true cost of owning land.

Holding the funding in Vote: Biosecurity would require greater oversight from MAF in how the funding was allocated. The landowning agencies would still be involved in the RPMS process, however there would be less incentive for Crown land management agencies to engage in the RPMS in a meaningful way. Being in one "pot" would give greater flexibility to where the Crown's contributions could be directed, both within and between regions, in a given year.

Either way, where available funding is less than what is needed to fully meet Crown obligations, the Government will need to prioritise this work against other Crown priorities.

Binding the Crown – does it meet Cabinet Office requirements?

Cabinet Office Circular CO (02)4 states that 'the general principle is that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of Government.

To determine whether the Crown should or should not be bound, the following factors have been assessed:

a) the desirability of the Crown being subject to the same rules and liabilities as general citizens;
b) the possibility that excluding the Crown from the application of an Act will create unfair benefit to the Crown and/or adversely affect third parties;
c) whether any operations or activities relating to the special functions of the Government would be hindered by making the Crown subject to the Act (such activities may be differentiated from those in which the Government operates in the same way as a private person);
d) whether applying the Act to the Crown would, in light of the special role of the Crown, create burdens on the Crown over and above private persons;
e) the financial costs of making the Crown subject to the Act.

Regional councils have signalled for several years that the Crown being treated differently to other landowners is undesirable and unfair. Where pests spread from Crown land where they are not being managed, to neighbouring land where the landowner is required to manage them, this places additional impacts and costs on the neighbouring landowner.

As the Crown is the biggest landowner, this can also undermine regional pest management and the value for money for all landowners.

Binding the Crown would not prevent operations and activities relating to the special functions of the Government from occurring, in this case holding land for a particular purpose such as to protect biodiversity values, providing national defence and roads.

However, where insufficient funding is allocated to Crown land management agencies to fully meeting Crown obligations then either the Government can allocate new funding to this purpose or decide that agencies must reprioritise their baseline budgets for other land management functions. This may mean that funding is diverted from other Government priorities and outcomes to meet RPMS obligations which could affect the core level of services some Crown agencies provide.

In saying that, maintaining the situation where the Crown is not required to participate in regional pest management, may result in regional councils and communities pulling back on investment in regional pest management and commitment to working with central government in other areas, which could have significant flow-on costs to the Crown. For example, landowners are reluctant to invest in control of key pests such as rabbits or wilding pines where their efforts are undermined by re-invasion from Crown land. Another example is that regional councils are a key partner in the didymo long-term management programme and provide significant support, such as ongoing river surveillance and advocacy for the 'check, clean, dry' campaign at a local level. If regional councils pulled back on their commitment to this programme, or in responding to other pest incursions, there would be significant flow-on costs.

Requiring the Crown to meet obligations like other landowners would not create burdens on the Crown over and above private persons. This is because although the Crown is a major landowner, the obligation is that the Crown should contribute where pests on its land cause external costs to other land holders, it does not bind the Crown to managing a pest on all of its land.

The national policy direction would help to manage these risks by providing the Crown a mechanism to retain a right over its ability to set its own goals and priorities and ensure funding is not diverted from higher to lower priorities i.e. ensure the efficient functioning of Government. It would also ensure that the obligations do not place unreasonable costs on landowners, regardless of tenure. It will also ensure that all landowners are treated the same and that the strategies provide value for money for all landowners.

Overall, MAF considers that the proposal to bind the Crown once regional pest management strategies are aligned to national policy direction will not impair the efficient functioning of Government.

MAF considers that the benefits of more effective and efficient regional pest management outweigh the residual financial risks to the Crown of being bound. DOC and LINZ consider this is uncertain given the potential effects on other outcomes and other parts of the pest management system.

Consultation

Crown landowning agencies are concerned about the potential unknown financial costs of complying with the good neighbour obligations in regional pest management strategies, and the impact that being required to comply would have on the Crown's priorities.

There is general support from stakeholders that the Crown should be bound, and that the current system causes regional pest management strategies to be undermined. However, the risks on other values would need to be managed.

Implementation

The Crown would not be bound until the national policy direction has been issued, and the regional pest management strategies have been aligned with it. This is likely to take three to five years. A transition provision would be required in the Act so that the Crown is not bound until the RPMS are aligned to national policy direction.

3. Ensuring timely decisions

Pest management roles and responsibilities can be found in a number of statutes and across jurisdictional boundaries. Within these, the system has only a few mandatory roles and responsibilities, with the rest being discretionary. Roles tend to be determined on a case-by-case basis with the principles and processes for making those determinations not clear or consistent.

The roles in pest management are not mandatory because it is considered that those with an interest to act will do so, and it would be difficult to determine in advance what actions would be appropriate. The Act assumes that where the potential benefits of pest management are broader than the individual, those who benefit will band together and pool their resources based on how much they are willing to pay to avoid the costs of the pest. The role of Government is to ensure they have the necessary powers to act collectively and prevent free-riding. Where the benefits of pest management fall on a region or the nation, the regional or national government would contribute respectively.

A problem arises, however, when individual decisions do not lead to optimal outcomes overall, because:

- the actions of one individual will not be effective unless others also act;
- the affected individual does not have the powers to act, and/or
- the party that should act (from an equity perspective) has no incentives to do so.

The Future of Pest Management project identified the lack of collective action in pest management as a problem, often caused by the fact that no-one makes a clear decision on whether it is desirable or not. There are often strong incentives on agencies to not make such decisions, particularly because they are likely to then face the costs of initiating collective action. These “non-decisions” mean that pests are costing New Zealand more than they should.

Additional costs arise where individual actions are less cost-effective than collective actions, or where there is a delay in collective action that allows the pest to spread and increase its population, making control more expensive and some control options infeasible.

This problem results in conflict within the system, because affected parties have no clear mechanism for seeking a solution to their concerns (non-decisions or decisions to not act cannot easily be challenged).

For example, wild pine trees have been a long-standing problem for landowners, with no party taking the lead and being accountable for the problem for the spread of these trees. The problem frequently crosses regional boundaries, and some activities would ideally be coordinated across the areas where it is a problem.

Option 3.1: Status quo

This option would allow agencies to continue to self-determine lead accountability for particular pest issues. This is a feasible option and would continue to result in adequate pest management in New Zealand. However, it does not provide any further clarity to participants in the system and the problems above will remain. The status quo would not allow New Zealand to take the opportunities available to improve effectiveness of the pest management system.

Option 3.2: Provide a mechanism so that lead accountability for a decision can be assigned (preferred)

This option proposes that any party that considers that the current accountability for and/or overall approach to a pest is inappropriate could seek a decision on who should be accountable. This decision would include a determination on whether collective action is warranted, what that collective action should be broadly seeking to achieve (e.g. national eradication versus containment versus more effective control in sensitive environments), which party should have lead accountability for the issue, and who else needs to be involved in the decision.

Assigning the accountability would require a party to make a decision about whether to take action – but could not require that party to make a particular decision. Ideally the decision would be binding on all central and regional government agencies to make a decision within a reasonable timeframe.

The process is expected to be used rarely, as accountability for most issues can be clearly identified – but even its existence should drive better behaviours. It is proposed that the details of this process are set out in a *New Zealand Gazette* notice issued by the Minister for Biosecurity.

Pest management participants agree that this mechanism is needed to prevent non-decisions, but have differing views on who should assign lead accountability.

Who would be the decision-maker under Option 2?

A number of options for who would assign the lead accountability were considered:

- The Minister for Biosecurity, advised by a committee
- A statutory committee with members representing a range of perspectives (e.g. MAF, DOC, Iwi, regional councils)
- The Director-General of MAF
- Another independent party.

The initial work favoured a statutory committee, as it was seen as being the most likely to have its decisions accepted. Any agency that would have to respond to the committee's decisions would be present during the decision-making process. This would reduce the risk that decisions are seen as biased, and the decisions would be based on the best available information.

Further work resulted in agreement that a Ministerial decision could be made to work, provided the above problems were addressed in the design. Having the Minister advised by a committee would provide greater assurance in relation to perceptions of bias. A timeframe for decisions would ensure that there was no undue delay.

MAF therefore recommends that the decision lie with the Minister, advised by a small group of people (three to five) representing pest management participants. This fits well with the Minister's existing functions under the Biosecurity Act (to provide for the co-ordinated implementation of the Act). The Plan of Action has recommended that this group of people become a statutory committee. MAF does not consider this latter step necessary.

A committee is less desirable because committee members may not fully understand the breadth of the issues, and may find it difficult to consider issues from a whole of New Zealand perspective. The committee approach would be more expensive and would probably result in less timely decisions because of the added complexity of working with a multi-party grouping. It is also slightly unusual for a statutory committee to have the power to determine accountability for issues.

Consultation

There is support from stakeholders on the proposed process to allow lead accountability for pest issues to be assigned. This will ensure that issues are not left unaddressed, but that there are conscious decisions made.

Implementation

It is intended that the procedures and criteria for how the Minister of Biosecurity makes these decisions will be specified in regulations under the Act. These regulations will be developed through the implementation phase of the Future of Pest Management project, beginning in September 2010.

The types of issues that will need to be addressed are:

- how the process is triggered
- the circumstances when the Minister can refuse an application
- the criteria for the Minister to use to determine who should be responsible
- the decision-making process that the Minister would use
- how the Minister would communicate its decisions to affected parties and the public
- the opportunity for the public to be involved in the process.

The advisory group will also be established through the implementation phase of the Future of Pest Management project.

4. Clarifying roles in pest management

MAF is responsible for oversight and leadership for pest management and regional councils have a role in pest management in their regions. MAF's role is not clearly set out in law, MAF is unclear on the full extent of its role, and other parties are not clear on what they can expect from MAF. Regional council representatives have requested a statement of their roles in the law to provide a clear basis for decisions about what they will fund. There are also potential overlaps between roles under the Biosecurity Act and other statutes (for example, the roles of DOC and Fish and Game councils as species managers, the roles of regional councils in protecting biodiversity).

In addition, medical officers of health and local authorities also have a role in pest control under the Health Act 1956, through domestic control of rats, mosquitoes and other species capable of spreading human disease.

Option 4.1: Assign roles and responsibilities for particular issues to individual agencies

This option would involve assigning types of pest management issues to individual parties in advance of a particular situation arising. On the face of it, this seems like a desirable situation and would result in the greatest clarity of roles. In practice, however, it would be very difficult to do this in a meaningful way, as the issues are not usually clear-cut and therefore cannot be squarely placed within a particular area. It is also difficult to predict and determine the particular circumstances around a pest management issue before the situation arises.

This option may not be desirable anyway as the high level of interdependence between the parties means that they are required to collaborate and share their knowledge and expertise, creating greater efficiency. Rigidly assigning roles for particular issues would also mean there is a risk that decisions would not necessarily be made by those best placed, and so decisions may not take into account the full range of impacts and information.

This option has not been considered further as it is cannot be implemented in a meaningful way.

Option 4.2: Assign oversight and leadership functions for MAF and regional councils (preferred)

This option involves specifying oversight and leadership functions at the national and regional levels. Specifying oversight and leadership functions for pest management in the Act will reduce uncertainty in the pest management system, by giving clear responsibility for national and regional leadership in pest management. Regional councils have indicated that clearly specified functions in the Act will assist them in making Long Term Council Community Plan decisions. It is intended that the functions specified are not limiting, but would indicate the types of functions to be undertaken.

MAF would be responsible for:

- Acting as overall leader for the pest management system
- Oversight of New Zealand's pest management system, including measuring overall system performance against outcomes
- Facilitating communication and co-operation and co-ordinating those involved in pest management to enhance effectiveness, efficiency and equity of programmes
- Overseeing national pest and pathway management programmes to protect the public interest.

Regional councils would be responsible for:

- Acting as leader for pest management systems within a region
- Ensuring that pest management in the region optimally contributes to relevant community and national strategies
- Ensuring that their regional pest management strategies are aligned with the national policy direction
- Facilitating communication and co-operation between those involved in pest management to enhance effectiveness, efficiency and equity of programmes

- Carrying out pest and pathway management programmes to protect the public interest where best placed to do so.

Consultation

There is support from stakeholders on the proposed roles for MAF and regional councils, and that if it provides greater clarity, then it is helpful for these to be spelt out in the Act. There were notes of caution however, to make sure that specifying the roles did not create a situation where existing activities are no longer provided for.

Implementation

MAF and regional council leadership functions will be specified in the Biosecurity Act. This will be supported by the National Plan of Action.

5. Other legislative changes

There are a number of other changes that will streamline the legislation, discussed below.

5.1 Biosecurity Act – purpose of Part 5

The current Part 5 of the Act provides for "the effective management or eradication of pests and unwanted organisms". This purpose statement does not provide for all areas of modern pest management, such as pathway or site-specific management.

An expanded purpose statement to Part 5 of the Biosecurity Act would extend it from providing *for the effective management or eradication of pests and unwanted organism* to include the pathways and vectors by which harmful organisms can spread.

5.2 Biosecurity Act – name of regulatory instrument

The key legislative tools under the Biosecurity Act for pest management are the national pest management strategy and the regional pest management strategy. The term 'strategy' implies that these tools are strategic in nature, when in reality they set out specific rules for how pests will be managed. This name creates unnecessary confusion.

It is proposed to change the name of 'pest management strategies' to 'pest management plans'.

5.3 Ombudsmen Act 1975 – application to management agencies

The Biosecurity Act provides for a management agency to be a Department, a regional council, a territorial authority or a body corporate. Although some management agencies, such as departments or regional councils, are automatically subject to the Ombudsmen Act and either the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, body corporates are not.

Management agencies under the Biosecurity Act are responsible for the exercise of significant statutory powers, and therefore meet *Legislation Advisory Committee Guidelines* for agencies that should be included. Other organisations that are subject to the Ombudsmen Act include the New Zealand Fish and Game Council, Quotable Value Limited and Solid Energy New Zealand Limited. The Official Information Act applies to all organisations that are listed in Parts 1 and 2 of Schedule 1 of the Ombudsmen Act.

It is proposed that Schedule 1 of the Ombudsmen Act is amended so that management agencies under the Biosecurity Act that are body corporates are subject to the Ombudsmen Act and Official Information Act. The application of these Acts would be limited to a management agency's functions under a pest management strategy.

5.4 Wild Animal Control Act 1977 – application to possums and wallabies

The Wild Animal Control Act and the Wildlife Act contain barriers to efficiently managing the animals that fall under them.

Regional councils consider that the Wild Animal Control Act is a barrier to efficiently managing animals that fall under this Act. In particular, possums and wallabies are a problem for regional councils.

No reasons were identified to keep these species under the Wild Animal Control Act (for example, to allow co-ordination of hunting effort), and maintaining their current status added additional potential costs and bureaucracy to the management of the species. The only actions being taken under the Wild Animal Control Act for these species relate to wallabies, and could be equally done under the Biosecurity Act.

It is proposed to exclude possums and wallabies from the Wild Animal Control Act. As they tend to be animals in a wild state, landowners with possums and wallabies on their land will not be required to meet obligations under the Animal Welfare Act 1999 related to being in charge of an animal.

There are currently controls for wallabies under the Wild Animal Control Act that will need to be assessed to determine how they should be covered by the Biosecurity Act. MAF and Department of Conservation officials will investigate this through implementation of the Future of Pest Management project.

5.5 Wildlife Act 1953 – provisions for managing injurious birds

Part 4 of the Wildlife Act relates to regional council control of "injurious birds" – that is, unprotected birds that are creating problems. The provisions empower councils to carry out functions in relation to those birds, but also require that they get agreement from the Director-General of Conservation to their control plans.

The empowering provisions are no longer needed, as councils have sufficient powers under the Local Government and Biosecurity Acts to carry out controls, charge rates, etc. The provisions are of no value for wildlife management, and impose potential costs and barriers to biosecurity activities. The approval provisions are not considered appropriate and are not currently being enforced.

It is proposed to remove the provisions that to injurious birds from the Wildlife Act. This would leave the Biosecurity Act as the mechanism for collective action, and make the control of the birds easier.

Conclusion and Recommendation

The Biosecurity Act provides a legal framework for the effective management of risks that harmful organisms can present to a range of values in New Zealand. These include economic, environmental, human health, cultural and social values.

The amendments proposed now are necessary to support the modern approaches in the way biosecurity is managed. Collectively the changes will promote more effective and efficient biosecurity, encourage partnerships in the management of biosecurity risks, and provide flexibility to enable future improvements.

All aspects of the biosecurity system are implicated:
- border risk management – preventing the introduction of harmful organisms whilst facilitating safe trade;
- readiness – preparing for the possible introduction of harmful organisms;
- response – responding to the discovery of a new harmful organism; and
- pest Management - managing the impacts of established harmful organisms.

Around these systems, the specific amendments proposed have been developed as a suite. The amendments should not be treated as a piece-meal listing of changes. This RIS has not re-addressed the policy for those areas of proposed changes where Government agreement already exists; but has concentrated on the changes in border management and pest management.

It is recommended that the Act be amended as described in the two associated Cabinet Papers:

- Biosecurity Act 1993: Approval for Amendments; and
- Managing Pests in New Zealand: Discussion Paper and Legislative Changes.

Consultation Process

This section describes the consultation activity that has been an integral part of the Biosecurity Amendment Bill project. This project involved consultation on the entire suite of proposed changes to the Biosecurity Act as a package. MAF accommodated feedback via the Biosecurity Amendment Bill project even when effectively duplicating consultation that had been done through other projects.

The other projects or work streams that have been run with their own consultation activity are government/industry agreements, reforms to pest management, extension of jurisdiction into the EEZ, Farms On Line, and the work area around the joint border management system. In all cases this consultation was additional to that described below.

Who was consulted

A wide and diverse range of stakeholders were covered by MAF's consultation, including primary industry groups, organisations and groups with interests in New Zealand's borders, organisations with a marine focus, iwi groups and other Maori stakeholders, Crown Research Institutes, NGOs, regional councils and territorial authorities. Specific parties included (this is not an exhaustive listing):

- Animal Health Board
- Businesses operating in accordance with pest management strategies
- Fonterra
- Heinz Watties
- Importers
- Customs agents
- Port and associated businesses: e.g. Kiwi Car Carriers
- Shipping lines and airline operators
- Airport operators
- Airline service and cargo businesses
- Industry representative bodies (travel, pest management, primary production, primary processing, etc, e.g. Federated Farmers, Meat and Wool NZ, Meat Industry Association, Forestry Owners Assn, NZ Grain and Seed Trade Assn, Horticulture NZ, Nursery and Garden Industry Assn, NZ Flower Growers Assn, NZ Fresh Produce Importers Assn, NZ Retailers Assn, NZ Pork, Port Companies of NZ, Board of Airline Representatives, Customs Brokers and Freight Forwarders Assn, NZ Shippers Council, Vets Assn)
- Transitional facility operators, quarantine facility operators, zoological parks.

Government agencies were consulted and invited to two separate briefing sessions that were held around the timing of each of the stakeholder consultation rounds. Government agencies were also given the opportunity to make written submissions.

Those agencies that attended included MFAT, Fisheries, NZFSA, ERMA, Health, Customs, DOC, Maritime NZ, Transport, AgResearch.

What form the stakeholder consultation took

MAF consulted stakeholders through two phases of targeted workshops, each supported by a separate published information paper [Information Paper No. 2009/06 and Discussion Paper No. 2010/01 refer] that was distributed widely for comment and placed on Biosecurity New Zealand's public website.

First round of consultation

The first round of workshops were held in November 2009 in Auckland and Wellington. MAF produced an information paper which it distributed widely to over 300 stakeholders from a broad range of industries and interests, along with an invitation to attend the workshops. The information paper set out the drivers for change, explained how MAF Biosecurity New Zealand would like to be able to work in the future, and what changes would be needed in the Biosecurity Act to achieve this.

Thirty stakeholders attended the Auckland workshop, and 35 attended the Wellington workshop. MAF used these workshops to set the scene by explaining MAF's key areas of change, and problems identified in the Act as it stands. It also used the workshops to get feedback from stakeholders by having them discuss the proposed changes in mixed groups (for example, having border groups discuss with primary industry groups). MAF also answered questions and took note of suggestions for other areas of possible change.

Second round of consultation

The second round of workshops were held in February 2010, again in Auckland and Wellington (during both rounds of consultation, MAF considered holding a workshop in the South Island as well, but decided that there would not be sufficient interest in a South Island workshop to justify the cost). For this round, MAF identified around 150 key stakeholders and directly invited them to attend the workshops; MAF then distributed a summary of proposals document to its wider list of stakeholders, along with an invitation for these stakeholders to attend the workshops if interested.

The summary of proposals document described in greater detail each areas of amendment.

The number of stakeholders attending each workshop was very similar to those from the first round of consultation. MAF used these workshops to explain in detail the proposed changes to the Biosecurity Act, and followed a similar agenda to the one used in the first round of workshops to receive discussion and feedback from mixed groups of stakeholders.

MAF recorded feedback and discussions from the workshops, and analysed this along with the written submissions received afterwards. Feedback from consultation informed the policy development of the Biosecurity Amendment Bill.

Limitations on consultation

MAF chose to undertake the targeted consultation described above because of working to extremely tight deadlines to complete the amendments within the timeframe agreed to by the Minister of Biosecurity.

The Minister agreed in August 2009 that amendments to the Biosecurity Act should be progressed through an amendment Bill introduced in approximately August 2010. To meet this deadline, the Cabinet paper must be ready to go to Cabinet in May 2010, meaning that MAF is working to a shorter timetable than might otherwise be desirable for Cabinet papers of this size and complexity.

MAF did not consider it would be possible to meet its deadline through a typical public submission process, so the process of consultation outlined above was adopted.

Of importance, MAF considers that it has received more value out of the targeted consultation process described above than it would have from the usual broad consultation process. The consultation process chosen encouraged stakeholders from across the biosecurity spectrum to exchange views and understand others' perspectives on the specific issues and proposals under consideration, as well as the greater biosecurity system in general. MAF considers that this open exchange far better facilitated understanding and encouraged direct feedback than the typical public submission process. The targeted consultation process was possible because of MAF's established stakeholder networks.

Key Feedback Received

All comments arising from the workshops were recorded and considered as part of MAF's analysis, as well as written comments in response to the information papers. MAF did not undertake to publish a formal summary of these comments but specific discussions/response was provided to certain stakeholders as appropriate.

In total MAF received more than 50 written submissions, from a range of industry groups, non-industry groups and individuals, government departments and regional government, in addition to the comments, questions and discussions recorded at the two sets of workshops. Overall though, the objectives sought and the suite of changes that comprise this amendment have received significant stakeholder support. If there was one area that is still of concern to the affected stakeholders, it is the Government/industry agreements. This and other specific themes of the stakeholder feedback have been explained in the body of the options analysis.

Monitoring and Evaluation

This section describes the monitoring and evaluation approach to assess the effectiveness of the proposed changes to the Biosecurity Amendment Act.

The Act and the proposed amendments are essentially enabling in nature. This means that for most requirements to be implemented they need to be made in regulations or tertiary instrument. The making of regulations and tertiary instruments will be subject to the required processes to ensure adequate justification and consultation has been done.

As part of the Government's drive for "less and better regulation" MAF like other departments is required to complete for the Minister of Finance and Minister of Regulatory Reform an annual plan for regulatory review. At a high level then, this ensures annual consideration of the regulatory biosecurity risk management regime. With the eventual passage of the Biosecurity Amendment Bill, the risk will be that this will lessen the rigour given to assessing the regime – certainly in the immediate ensuing years. MAF considers it important to mitigate this risk and ensure that appropriate consideration is in fact given to the workability of the legislative regime at this highest level.

MAF is subject to the usual reporting obligations of a Government Agency. In this context the Output Plan – Vote Biosecurity (and supporting cascade documents which expand and give effect to the intent of the Output Plan) contain specific performance measures which individually and collectively provide a sound platform for monitoring the overall effect of the changes that will be implemented as a result of the biosecurity Amendment Bill. These performance measures (as prepared for the 2009/2010 year) will need to be updated in due course to fully reflect the legislative changes.

Also the performance measures do not comprehensively cover the full range of activity that will arise from implementing the legislative amendments - notable omissions are in the area of Farms On Line and Government/industry agreements. Performance measures will be needed in terms of implementation and on-going operational performance.

MAF is a party to the Border Sector Governance Group along with Customs and Immigration. Through this Group's oversight various novel border management approaches are being trialling or introduced primarily to implement the trans-Tasman travel priorities. An associated project is the Joint Border Management System (JBMS) which will provide the operational infrastructure for these initiatives. In both these areas specific attention is being given to monitoring and evaluation.

Performance measures will be measurable, thus evaluation would be able to be informed by quantitative information, but may involve some subjective assessment where appropriate.

Monitoring and evaluation will fall to MAF, but in some areas other effected parties may establish (by themselves or in conjunction with MAF) other monitoring approaches.

For example it is anticipated that in the areas of pest management and Government/industry agreements the parties directly involved will take a lead interest in monitoring. A plan of action, and progress on its implementation, will be reviewed by 31 December 2015. The review will:

- measure progress achieved in contributing to the outcomes of the plan using the performance measurement framework;
- consider the degree of adherence to the principles in the plan;
- consider the degree of system change in relation the key characteristics in the plan and background document;
- measure progress against actions in the plan; and
- consider any other matters directed by the Minister for Biosecurity at the time of the review.

There are also 'key characteristics' that will be used to monitor progress:

A: Aligned to outcomes	B: Adaptive	C: Effective	D: Strong relationships
Participants understand the impacts of pests on outcomes, and design pest management activities to achieve the outcomes in the most effective ways.	Pest management systems identify and respond to emerging changes in risk or management opportunities at all levels and in a timely way.	Pest management approaches and systems make the best use of available resources.	New Zealanders are active, informed, supportive, and supported, participants in pest management systems.