



Proposed Process for the Minister for Primary Industries to Assign Responsibility for a Decision on a Harmful Organism or Pathway

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SUBMISSIONS

The Ministry for Primary Industries (MPI) is seeking submissions from interested parties on a process for the Minister for Primary Industries (the Minister) to assign responsibility for a decision on the appropriate response to a harmful organism or pathway under the Biosecurity Act 1993.

Comments on any matters set out in this discussion document are welcome. MPI is particularly interested in comments regarding:

- if the design of the proposed process to assign responsibility for a decision on the appropriate response to a harmful organism or pathway is fit for purpose;
- if you think any component of the proposed process would not be effective in terms of the Minister assigning responsibility for a decision to the appropriate party;
- if any component is missing from the proposed process that would otherwise be effective; and
- the practical impacts of the proposed process.

The following points may help in preparing submissions:

- comment, wherever possible, on a specific section of this document;
- supply reasons and, if possible, data to support comments;
- examples to help us to understand your point; and
- use good quality type, or make sure comments are clearly handwritten in black or blue ink.

Please include the following information in your submission:

- the title of this discussion document;
- your name and title;
- your organisation's name (if you are submitting on behalf of an organisation); and
- your address (e.g. phone, email etc).

Please ensure that MPI receives your submission no later than 5:00pm on 14 June 2013. Late submissions will not be accepted and MPI reserves the right to waive this requirement at its discretion.

Submissions can be sent by email or post to:

npdconsultation@mpi.govt.nz

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Part One: Introduction and Regulatory Impact Analysis

1.1 EXECUTIVE SUMMARY

The purpose of this discussion document is to consult on a set of proposed regulations that are to be enacted under the Biosecurity Act 1993 (the Biosecurity Act). The regulations detail a process for the Minister for Primary Industries (the Minister) to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism, or a pathway that could potentially spread a harmful organism.

The reforms to the Biosecurity Act in 2012 included the introduction of a new role for the Minister to assign responsibility for a decision on a harmful organism or pathway under Part 5 of the Biosecurity Act. The Minister may use this provision in situations where he or she deems fit, including:

- when there is debate or delays in a party taking responsibility for a harmful organism or pathway (delays include situations where no party offers to take the lead for a harmful organism or pathway within a reasonable timeframe); or
- where it is unclear which party is responsible for making a decision on how to respond to a harmful organism or pathway; or
- if parties are unable agree on which party should take responsibility for making decisions on a harmful organism or pathway.

The objective of the provision is to avoid situations where no party takes responsibility for making a decision on how to manage a harmful organism or pathway.

To fully implement the Biosecurity Act the provision needs to be enacted as a regulation setting out the process for the Minister to assign responsibility. The Ministry for Primary Industries (MPI) has developed a proposed process for this purpose which includes the following stages:

- The process will be triggered by any person submitting an application to the Minister requesting that he or she assign responsibility for a decision on a harmful organism or pathway.
- The Minister will determine whether to progress the application and make a preliminary assessment of the likely intermediate outcome for the issue and whether collective action is required. MPI will provide preliminary advice to the Minister on the issue relating to the harmful organism or pathway.
- If the Minister decides to consider the application, he or she will be required to undertake consultation with the parties who will be directly affected by the assignment of responsibility for a decision.
- MPI will provide final advice to the Minister on the issue, including the outcome of consultation, and recommendations of those who are best placed to be assigned responsibility for making a decision on the appropriate response.
- The Minister will take into account the application, advice from MPI, comments from the applicant(s) on MPI's advice, the outcome of consultation, and any independent advice when making a decision on the assignment of responsibility.
- The Minister will make a decision on whom to assign responsibility and will publically advise of the assignment by issuing a notice in the New Zealand Gazette. MPI will also notify of the assignment by other means it considers appropriate and effective.

1.2 STATUS QUO

1.2.1 Roles and responsibilities in pest management

New Zealand's pest management system is complex due to the varying biological nature of pests¹ and the different impacts that they have. As a result, there are a number of parties who are involved in pest management activities, including central government, local government, industry groups, Māori, non-government organisations, landowners and occupiers, and the general public.

MPI is the lead government agency that is responsible for the oversight and national coordination of the pest management system. Regional councils are responsible for pest management within their respective regions and have established pest management plans under which various parties contribute pest management activities.

The pest management system is based on the concept that those with an interest to act will do so. The system has relied on pest management activities being freely undertaken by individuals or groups of individuals with a common interest in managing a pest. As the system has been established with the intention that those with an interest will act, there has been no enforcement or requirement for any particular individual or groups of individuals to respond to a particular issue. This included any harmful organism or pathway that was not already being managed by a pest management plan or programme.

In cases where individual actions are less effective, less efficient, or less equitable, the Government has intervened to co-ordinate interventions, facilitate collective responses, and

¹ A pest means an organism specified as a pest in a pest management plan made under Part 5 of the Biosecurity Act 1993.

prevent individuals benefitting from pest management activities without contributing to those activities (known as ‘free-riding’). The Government contributes financially where the benefits of conducting pest management are at a national level, and ensures that individuals have the necessary powers to act collectively to prevent free-riding.

Collective action for pest management is coordinated action undertaken by more than one party with a regulatory framework or formal agreement to ensure that each party contributes as intended. Contributions for collective action might take the form of payment, such as an industry levy.

1.2.2 Reforms to Part 5 of the Biosecurity Act

The Biosecurity Law Reform Act 2012 made significant changes to the Biosecurity Act, and expanded the provisions to Part 5 which relate to pest management. Part 5 clarifies the roles and responsibilities for MPI and regional councils in New Zealand’s pest management system. These provisions include the introduction of a new role for the Minister. Under section 55 of the Biosecurity Act, the process for the Minister to assign responsibility for these decisions must be set out in regulations:

55 Responsible Minister may assign responsibility for decisions

- (1) The responsible Minister may assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway.
- (2) The process for the Minister to assign responsibility must be set out in regulations.
- (3) If the Minister assigns responsibility to a department or regional council,—
 - (a) the Minister may specify a time within which the decision must be made; and
 - (b) the Minister may extend the time if the Minister considers that exceptional circumstances exist justifying the extension; and
 - (c) the department or regional council must make the decision within the time or extended time.

Section 55: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

1.3 PROBLEM DEFINITION

1.3.1 The Minister’s assignment of responsibility for pest management decisions

The provision for the Minister’s assignment of responsibility was included in the Biosecurity Act to address situations where no party has taken responsibility for making a decision on the appropriate response to an issue relating to a harmful organism or pathway. Delays include situations where no party offers to take the lead for a harmful organism or pathway within a reasonable timeframe, or where it is unclear which party is best placed to undertake this role.

The Minister has powers to assign responsibility for such a decision relating to a harmful organism or pathway under the Biosecurity Act that must be set out in regulations. The regulations attempt to address the lack of fully defined leadership in the pest management system by determining which party is best placed to be assigned responsibility for making a decision on how to manage a harmful organism or pathway. The Minister may use the regulations in situations where he or she deems fit, including:

- where there is debate or delays in a party taking responsibility for a harmful organism or pathway (delays include situations where no party offers to take the lead for a harmful organism or pathway within a reasonable timeframe); or
- where it is unclear which party is responsible for making a decision on how to respond to a harmful organism or pathway; or
- if parties are unable to agree on which party should take responsibility for making decisions on a harmful organism or pathway.

The regulations will clarify the process that the Minister will use to determine which party should be responsible for making a decision on a harmful organism or pathway.

Questions

- Do you agree that the proposed process should be used in the situations described above?
- Are there other situations not stated above where the proposed process would be used? If so, please detail these situations and explain why they should be used.

1.3.2 Issues with the current pest management system

The roles and responsibilities in New Zealand's pest management system is a national policy issue. There are few prescribed roles and responsibilities for managing pests in legislation, with the exception of the Wild Animal Control Act 1997 and the Conservation Act 1987. While the Biosecurity Law Reform Act 2012 and the Pest Management National Plan of Action have provided greater clarity for MPI and regional councils, there remains a level of unavoidable ambiguity for roles and responsibilities within the pest management system.

The general approach in the Biosecurity Act has been to empower parties to take responsibility for managing pests where they were best placed to do so. Roles tend to be determined on a case by case basis and the principles and processes for making these determinations are not clear or consistent. In lieu of defined or allocated responsibilities, central and regional government and industry clubs and organisations have often determined their own arrangements of responsibilities.

The lack of defined accountability sometimes leads to no party taking responsibility for making a decision on how to manage a harmful organism. Other parties have tended to wait for another potentially responsible party to take the lead for a response. Problems can arise where no party makes a decision on who is responsible for a harmful organism in New Zealand that is newly arrived or has established itself and is not subject to a formal management plan. In particular, the responsibility for a harmful organism becomes unclear when MPI decides not to undertake an incursion response. Successive failures to take responsibility inevitably lead to gaps in the pest management system where no party takes responsibility for making decisions on harmful organisms that are not subject to a formal plan or programme.

Additionally, there is often a reduced incentive for one party to take a lead role in the management of a harmful organism when other parties are able to receive the benefits of pest management activities. This is because the other parties may avoid contributing to the activities until a formal plan imposes such obligations. As a result, potentially responsible parties may rely on other parties to take the lead in conducting pest management activities. The wider consequences of decisions not being made on the management of harmful organisms are:

- decisions not being made in a timely manner;
- management activities not being done where and when they should be;
- the costs to parties not falling equitably; and
- no parties are taking leadership for specific issues relating to a harmful organism.

1.3.3 Evidence supporting the problem definition

An independent report² in 2008 identified that the roles and responsibilities in New Zealand's pest management system were not sufficiently clear to allow it to function efficiently. The report stated there was a strong desire amongst those parties involved in pest management for clearer roles and responsibilities for central government and regional councils.

A 2010 Ministry of Agriculture and Forestry (now MPI) report³ identified that a lack of defined accountability led to debate and delays in making decisions on pest management issues. One view was that the mechanisms were needed to ensure that there were no “non-decisions” where there were collective interests at stake. The perceptions of parties involved in pest management was that some decisions were not being made at a national level and were being left to be addressed by other parties who may or may not have a strong incentive to make a decision. This suggested that there was an underlying issue with the allocation of decision making responsibilities within the pest management system.

Case study: Wilding conifers

Wilding conifers are an example of where it has been difficult to determine which party should be responsible for making decisions. The spread of wilding conifers is a pest management and forestry resource issue that involves multiple parties.

Wilding conifers originate from the planting of conifer species which spread beyond their initial plantation areas into surrounding environments. Wilding conifers grow faster and taller than grassland and other short stature vegetation and may lead to land becoming unavailable for extensive pastoral farming, reduced water yields, unpopular landscape impacts and a reduction in biodiversity including extinction of some native plant species. Historically the Crown planted conifers to counteract erosion and to mitigate hydro-electric power developments. Private farming shelterbelts and plantings for commercial forestry have also resulted in the unintentional spread of wilding conifers.

Multiple parties have interests in wilding conifers, either as beneficiaries, exacerbators of harm, or both. The parties eventually came to a consensus that collective intervention needed to be led from a national level, given the number of parties involved and that it was an issue affecting regions around New Zealand. The Minister for Primary Industries agreed that MPI would be the lead party responsible for the issue given the broad range of interests at stake.

Under the new provision in the Biosecurity Act such debate and delays will be able to be avoided by the Minister using his or her powers, when set out in regulations, to directly allocate decision making responsibility to a lead party.

² LECG (2008), *Think Piece on the Future of Pest Management in New Zealand*.

³ MAF (2010), *Future of Pest Management: Analysis completed to make a plan of action for better pest management in New Zealand*.

1.4 OBJECTIVES

The objective of the proposed regulations in this discussion document is to set out the process that the Minister may use to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway. The overall objectives for the process are to:

- a. clarify leadership roles in the pest management system; and
- b. address situations where debate or uncertainty in making decisions has resulted in inaction or delays in responding to an issue relating to a harmful organism or pathway.

1.5 OPTIONS

There are two options presented in this discussion document. Option One is not to change the way roles and responsibilities are assigned in the pest management system by maintaining the status quo. Option Two is to set out the process that the Minister may use to assign responsibility in the form of proposed regulations to be made under section 55 of the Biosecurity Act.

1.5.1 Option One: Maintain status quo

Maintaining the status quo is not considered to be a viable option. Under the reforms to the Biosecurity Act, section 55 gives the Minister the power that he or she may use to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway. The Biosecurity Act also states that the process for the Minister to assign responsibility must be set out in regulations.

Currently issues relating to a harmful organism are addressed without a formal process and hinge on MPI making a decision on whether to undertake an incursion response. If MPI decides not to undertake a response, then potentially responsible parties may, or may not, agree on what action to take. Also the parties are not required to reach agreement on who is to be the lead party for making decisions on a response.

If the status quo is to be maintained, the Minister would then not have the legislative power to assign responsibility for a decision on how to manage a harmful organism or pathway when there is debate or delay between parties. This is not an ideal scenario as it would not address the lack of defined roles and responsibilities in the pest management system.

1.5.2 Option Two (Preferred): Regulations setting out a process for the Minister to assign responsibility for decisions

Under the Biosecurity Act, the Minister will be able to make regulations to assign responsibility for decisions on any harmful organism (terrestrial or aquatic) in New Zealand that is newly arrived or has established itself, and is not being effectively managed or where there have been no formal decisions made on its management. Before such regulations were made, there would be an obligation to consult with affected parties.

MPI considers that the parties involved in pest management are generally those listed in Table 1. Those that may be best placed to make a decision on the management of a harmful organism or pathway will include central government agencies, regional councils, and non-government entities that participate in the pest management system.

Table 1: Parties Involved in New Zealand's Pest Management System

Government Parties	Non-Government Parties
Local government: <ul style="list-style-type: none"> • City councils • District councils • Territorial local authorities 	Primary industry parties: <ul style="list-style-type: none"> • Associations • Bodies • Clubs • Organisations or sector groups
Central government: <ul style="list-style-type: none"> • Department of Conservation • Department of Corrections • Housing New Zealand • Land Information New Zealand • Ministry for the Environment • Ministry of Health • Ministry for Primary Industries • Te Puni Kokiri • New Zealand Defence Force • Other government agencies that hold Crown land 	Private companies: <ul style="list-style-type: none"> • Meridian • Genesis
	Māori: <ul style="list-style-type: none"> • Iwi groups, boards, trusts, and organisations
	General public: <ul style="list-style-type: none"> • Private land owners and occupiers • Community groups • Public interest groups
State owned enterprises: <ul style="list-style-type: none"> • Transit New Zealand • Kiwirail • Transpower 	

Summary of the process for the Minister to assign responsibility for decisions

MPI has developed a proposed process that the Minister must use to assign responsibility for decisions. The process would be used by the Minister to determine:

- a preliminary assessment of the high-level management objective for a harmful organism or pathway;
- whether collective action would result in better outcomes than individuals acting alone; and
- the party that will be assigned responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway.

The process would be triggered by any person submitting an application to the Minister requesting that he or she assigns responsibility for such a decision.

When determining the high-level management objective, the Minister will select one or more of any intermediate outcomes from the National Policy Direction for pest management plans and programmes (the NPD)⁴ which include:

- 'exclusion' which means to prevent the establishment of an organism that is present in New Zealand but is not yet established in an area;

⁴ It is estimated that the regulations which set out the National Policy Direction for pest management plans and programmes will be approved by the Governor General in June 2013.

- b. ‘eradication’ which means to reduce the infestation level of an organism to zero levels in an area in the short to medium term;
- c. ‘progressive containment’ which means to contain and reduce the geographic distribution of an organism to an area over time;
- d. ‘sustained control’ which means to provide for the sustained control of an organism in an area to a level where the costs imposed on persons are manageable; and
- e. ‘protecting values in places’ which means an organism that is capable of causing damage to a place is excluded or eradicated from that place, or is contained, reduced, or controlled within the place to an extent that protects the values of that place.

The Minister must apply criteria to determine whether collective action is the preferred option and the party that should be assigned responsibility. The Minister will undertake consultation through MPI which will include identifying and contacting the affected parties and inviting them to comment on the issue.

MPI will ensure that decisions made by the Minister are communicated to the affected parties and a public register of all the Minister’s decisions and subsequent decisions made by the party or parties that are assigned responsibility is made available to the public.

Questions

- Are there other parties involved in pest management who have not been listed in Table 1?
- Do you agree or disagree with the options described in the above section?
- Are there alternative options that should be considered that aren’t covered in the discussion above?

1.6 ANALYSIS OF OPTIONS

1.6.1 Analysis of Option One

Maintaining the status quo would mean that the lack of defined accountability in the pest management system is likely to continue into the future. Roles and responsibilities will continue to be inconsistent and unclear for those parties involved in pest management. There will be limited legislative powers for the Government to assign responsibilities where there is debate or delays involved in making a decision on the management a harmful organism.

As a result of delayed decision making, there may be subsequent delays in responding to a newly arrived organism, or an organism that has established itself and is not subject to a formal management plan. A decision on the organism may not be made in time to respond effectively, and it is possible that decisions on an organism may not be made at all if the issue is complex or involves a multiple parties. Indecision could result in delays in responding to the spread of a harmful organism.

The pest management system will continue to rely on the assumption that affected parties with a common interest in managing a harmful organism will conduct pest management

activities. Currently this is not always the case due to a number of factors, namely the differing purposes, interests, and capabilities of the parties involved. Additionally, the costs of managing a harmful organism may not be fairly distributed amongst these parties and other affected parties not expressing a common interest. This could result in free riding by some affected parties. A lack of defined accountability can lead to affected parties being unable to agree on who should be responsible for making decisions on a harmful organism. In the long term this could result in pest management costing more than it would if agreement had been reached.

The benefits of maintaining the status quo are that it allows for self-determination whereby parties can choose their roles and responsibilities without being directed. There are minimal financial costs associated with continuing with the current approach.

1.6.2 Analysis of Option Two

The Minister's power that he or she may use to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway addresses a gap in the current pest management system where currently no party can be required to take responsibility for managing a harmful organism or pathway.

The Minister's assignment will not delegate statutory powers to a party or compel a party to act. It will only require a party to make a decision on the appropriate response to an issue relating to a harmful organism or pathway.

It is anticipated that the Minister will exercise these powers rarely and only in situations where no one assumes responsibility for a harmful organism, or where debate between parties on an issue is taking too long to resolve.

Where the Minister decides to assign responsibility for decisions to a government agency or regional council, the Minister's decision will be legally binding and the party will be required to make a decision on the appropriate response within a specified time period. If the Minister assigns responsibility for decisions to a non-government entity, such as a club or industry organisation, they would not be legally bound to make a decision. In this situation the Minister would invite, rather than request, the party to make a decision on an issue.

Minister's role in relation to the Government Industry Agreement

The Government Industry Agreement (GIA) is currently being negotiated between the Government and primary sector industries. The GIA will provide a coordinated approach in planning and response activities for incursions of risk organisms that are not established in New Zealand.

There is a possibility that there will be an overlap between the planning and response activities of the GIA activities and pest management activities. For example, the GIA proposes to respond to a harmful organism that is newly arrived or has established itself in New Zealand where there are new ways of eradicating or containing the organism, or the organism is behaving in new ways and can be eradicated.

In cases where the GIA Governance Group has decided that a response to an established organism would be better managed as part of the pest management system, they could either:

- a. discuss if any of the GIA parties, including MPI, would be best placed to make a decision on the organism; or
- b. if no parties wish to make a decision on the organism, request that the process for the Minister to assign responsibility for a decision be triggered.

When a harmful organism has transitioned from an incursion being managed under the GIA to an organism that is to be managed as a pest management issue, the Minister may decide to assign responsibility for a decision on the management of the organism at that time.

Questions

- Does the analysis of the options adequately reflect the issues associated with each option?

1.7 IMPACTS AND BENEFITS

1.7.1 Impacts and benefits of the proposed regulations

The parties who will be directly affected by the regulations are those who may be assigned responsibility for making decisions. Other parties may be affected by any subsequent decisions made by the party who have been assigned responsibility for decisions by the Minister.

It is anticipated that there will be potential costs to the parties who are assigned responsibility for decisions, although it is difficult to quantify these costs in monetary terms. There may also be ongoing costs for the parties depending on the subsequent decisions made on the issue, such as costs associated with developing and implementing a management plan or programme. However, management activities associated with a harmful organism will only proceed if there is a net benefit in doing so.

The party who have been assigned responsibility may make subsequent decisions that lead to the imposition of additional costs on other parties undertaking activities to manage a harmful organism. However, the process does not give a party the power to compel other parties to act.

Throughout the process MPI will be required to provide the Minister with advice on:

- resourcing costs;
- carrying out public consultation to confirm which party should be assigned responsibility; and
- publically notifying the decisions that have been made.

There will also be costs to the party that is assigned responsibility for:

- managing a harmful organism;
- making a decision on a response for the issue; and
- possibly undertaking the response (such as the implementation of a pest management plan or programme, or pest management activities).

Benefits

The benefits of the regulations will be that a lead party is identified as having responsibility for making a decision on the appropriate response to an issue relating to a harmful organism. The responsible party will be expected to provide a clear direction on the high-level objective of the issue, and whether collective action is required.

The process will address a gap in the current pest management system and will identify clear objectives for any management programme that is implemented. It will encourage collective action where it is required, and will provide leadership for issues that had previously not been addressed by the parties impacted by the harmful organism.

The benefits are that the impacts of a harmful organism or pathway are more likely to be addressed. If left unmanaged a harmful organism or pathway may have a detrimental impact on New Zealand's ecosystem, environment, primary sector industries, and the wider public.

Risks

There is a risk that the Minister could be challenged on his or her decision to assign responsibility for a harmful organism or pathway. This may result in the process having to be repeated causing inefficiencies, resourcing implications for MPI, and further delays in responding to a harmful organism or pathway.

There is also a risk in that once the Minister has assigned responsibility the chosen party may delay making a decision, or make a decision to respond to the harmful organism but no action is taken.

Questions

- Have the benefits, risks, and impacts associated with adopting the proposed process been adequately described?

1.8 IMPLEMENTATION

If the proposed process set out in Part Two of this discussion document is approved, the Minister will go to Cabinet to seek approval for the regulations to be made. If approved by Cabinet, the regulations will be made by an Order In Council.

MPI will be responsible for implementing the regulations and conducting the process for the Minister when it is triggered.

1.9 MONITORING, EVALUATION, AND REVIEW

Once the regulations come into effect, MPI will be responsible for:

- overseeing the process for the Minister's assignment of responsibility for decisions; and
- ensuring that the Minister's decisions are communicated to the affected parties.

MPI will keep a public register of all the Minister's decisions, and subsequent decisions made by the parties that are assigned responsibility.

The process sets out that MPI's advice on the assignment of responsibility for decisions will be provided to an applicant for comment before it is submitted to the Minister. To address potential conflicts of interest where MPI is involved, either as an applicant or as a potential recipient of the assignment of responsibility, the Minister may request an independent review to ensure the MPI advice received is balanced and fair. The applicant will be provided with any independent report that is prepared.

Questions

- Do you agree that potential conflicts of interests will be adequately addressed by the proposed process?
- Do you have any comments or suggestions on the monitoring, evaluation, and review of the proposed process?

Part Two: Proposed Regulations

1.1 PURPOSE

The purpose of these regulations is to set out the process for the Minister for Primary Industries (the Minister) to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism, or a pathway for the potential spread of a harmful organism. The Minister may use this provision of the Biosecurity Act 1993 (the Biosecurity Act) in situations where he or she deems fit, including:

- where there is debate or delays in a party taking responsibility for a harmful organism or pathway (delays include situations where no party offers to take the lead for a harmful organism or pathway within a reasonable timeframe); or
- where it is unclear which party is responsible for making a decision on how to respond to a harmful organism or pathway; or
- if parties are unable agree on which party should take responsibility for making decisions on a harmful organism or pathway.

1.2 PROPOSED PROCESS FOR THE MINISTER TO ASSIGN RESPONSIBILITY FOR A DECISION ON A HARMFUL ORGANISM OR PATHWAY

1.2.1 Stage One: Application

The process will be triggered by any person submitting an application in writing to the Minister requesting that he or she assign responsibility for a decision on a harmful organism or pathway.

The following information must be included in an application to the Minister:

- a. information about the applicant(s), including name(s) and contact details;
- b. identification of and information on the risks posed by the harmful organism or pathway;
- c. a brief explanation of:
 - i. the issue and the current state of the harmful organism or pathway;
 - ii. why there are grounds for the Minister to assign responsibility for a decision on a response to the harmful organism or pathway;
 - iii. the likely intermediate outcome for the issue, being one of the intermediate outcomes from the national policy direction for pest management plans and programmes (the NPD)⁵;
 - iv. how collective action could improve the final outcome of the issue;

⁵ It is estimated that the regulations which set out the national policy direction for pest management plans and programmes will be approved by the Governor General before the end of 2013.

- v. the parties who are affected or potentially affected by the harmful organism or pathway;
 - vi. a summary of any discussion that the applicant(s) may have had with affected or potentially affected parties on the issue;
 - vii. a list or attached copies of useful documents that could be used to inform the Minister; and
- d. The applicant(s) may suggest a party that they think is best placed to be assigned the responsibility for making a decision on a harmful organism or pathway if they are not applying for the responsibility themselves.

If the initial application does not provide adequate information, the Minister will write to the applicant requesting that additional information is provided to ensure that an informed decision can be made.

1.2.2 Stage Two: Minister determines whether to progress the application (two to three weeks)

The Minister will receive advice from the Ministry for Primary Industries (MPI) on whether the Minister should begin the process of assigning responsibility or whether the Minister should reject the application based on the criteria set out below.

As a means of making an informed decision on whether to progress the application, the Minister will also form a view on:

- a. the likely intermediate outcome that a response to an issue relating to a harmful organism or pathway would be likely to seek to achieve; and
- b. whether collective action to manage the harmful organism or pathway could result in a better outcome than individuals acting alone.

Criteria for the Minister to determine whether to begin the process of assigning responsibility or whether to reject an application for assigning responsibility

The Minister may reject an application to assign responsibility for a decision on a harmful organism or pathway where:

- a. the harmful organism or pathway is currently subject to a formal management plan or programme under the Biosecurity Act;
- b. a decision on the harmful organism or pathway has been determined within the last ten years and there is no compelling reason or justification to re-examine the issue;
- c. the harmful organism or pathway is not yet present in New Zealand; or
- d. the harmful organism, or organism spread through the pathway, is not considered to cause or be capable of causing significant adverse effects to one or more of the following:
 - i. economic wellbeing;
 - ii. the environment;

- iii. human health;
- iv. enjoyment of the natural environment; and
- v. the relationship between Māori, their culture, their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.

Minister makes a preliminary assessment of the likely intermediate outcome

When considering a likely intermediate outcome for the issue, the Minister will have regard to whether the outcome would:

- a. be cost effective; and
- b. lead to a fair distribution of costs.

The Minister may select one or more of any intermediate outcomes from the NPD from the issue relating to the harmful organism or pathway:

- a. ‘exclusion’ which means to prevent the establishment of an organism that is present in New Zealand but is not yet established in an area;
- b. ‘eradication’ which means to reduce the infestation level of an organism to zero levels in an area in the short to medium term;
- c. ‘progressive containment’ which means to contain and reduce the geographic distribution of an organism to an area, over time;
- d. ‘sustained control’ which means to provide for the sustained control of an organism in an area to a level where the costs imposed on persons are manageable; and
- e. ‘protecting values in places’ which means an organism that is capable of causing damage to a place is excluded or eradicated from that place, or is contained, reduced, or controlled within the place to an extent that protects the values of that place.

A harmful organism is “an organism” in a. to e. above. For a pathway for the potential spread of the organism, “an organism” in a. to e. is the organism being spread by the pathway.

The party that is assigned responsibility for making a decision on a harmful organism or pathway will not be legally bound to adopt the intermediate outcome chosen by the Minister for their decision-making.

Criteria for the Minister to determine if collective action is required

The Minister must apply appropriate criteria to determine whether collective action is the preferred option and that a party should be assigned responsibility for decisions on a harmful organism or pathway. Collective action refers to pest management activities that are undertaken with coordinated actions by more than one party, and may have a regulatory framework or formal agreement to ensure that each party contributes as intended.

The Minister will apply the following criteria against the likely intermediate outcome to determine whether collective action would result in better outcomes for an issue relating to a harmful organism or pathway:

- a. whether exclusion, eradication, progressive containment, or sustained management could be a feasible and desirable objective;
- b. whether collective action would result in significantly increased efficiency of management;
- c. whether individual actions would result in an unfair distribution of costs; and
- d. whether effective management would require legal powers, such as powers under the Biosecurity Act.

MPI provides preliminary advice to the Minister

The Minister will receive preliminary advice from MPI in the form of a report which will:

- a. define the issue;
- b. identify the affected or potentially affected parties;
- c. set out a consultation process for the issue;
- d. inform the Minister of any legislative requirements⁶ or international agreements that need to be taken into account, such as the Crown's obligations to Māori under any of the Treaty Claims Settlement Acts;
- e. provide advice on:
 - i. the likely intermediate outcome for a response to the harmful organism or pathway; and
 - ii. whether collective action is potentially desirable to manage the harmful organism or pathway.

MPI's preliminary report will be provided to the applicant(s) for review and comment before it is submitted to the Minister. The applicant(s) may provide further information to clarify any matters raised in MPI's report to the Minister.

The Minister will decide whether to progress or reject the application following consideration of the likely intermediate outcome for the issue, whether collective action is desirable, MPI's preliminary advice, and additional information from the applicant. The Minister will notify the applicant as to whether their application has been accepted or rejected.

⁶ Includes legislation which potentially affects the planning, execution, and criminal investigation of biosecurity responses, such as: the Biosecurity Act 1993, Hazardous Substances and New Organisms Act 1996, Resource Management Act 1991, Agricultural Compounds and Veterinary Medicines Act 1997, Animal Welfare Act 1999, Animal Products Act 1999, Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, Marine Reserves Act 1971, Environment Act 1986, Fisheries Act 1996, Forests Act 1949, Health Act 1956, Health and Safety in Employment Act 1992, Local Government Act 2002, Wild Animal Control Act 1977, Wildlife Act 1953, Ngāi Tahu Claims Settlement Act 1998, and other Treaty Settlement Acts that have been passed into law.

1.2.3 Stage Three: Consultation (two to six weeks)

If the Minister decides to progress the application he or she will be required to undertake consultation on the assignment of responsibility for a decision on a harmful organism or pathway.

The Minister through MPI will:

- a. identify and invite affected or potentially affected parties (including the party that may be assigned responsibility for a decision) to provide comment on the issue; and
- b. provide information and timeframes on the consultation process and maintain a written record of all consultation carried out.

The Minister may decide to set up a working group of selected individuals to provide comment on the issue if he or she considers that the situation requires such a group to be established to consider and advise the Minister on the matter. Consultation with any working group may be done on a case-by-case basis depending on the nature of the issue.

The Minister through MPI may also take advice on whether additional consultation with Māori is required. In cases where Māori interests are affected, the Minister will consult with a Māori advisory committee, an iwi leaders group, or a similar reference group.

Questions

- Is the consultation process described above adequate?
- What level of obligation should there be for consultation?

1.2.4 Stage Four: Minister receives final advice (two to six weeks)

The Minister will receive final advice from MPI in the form of a report which will:

- a. recommend a likely intermediate outcome for the issue;
- b. recommend whether collective action is required to effectively manage the harmful organism or pathway;
- c. inform the Minister of the outcome of consultation, and summarise the views expressed during consultation, including any discussions held with affected parties, working groups, advisory committees, iwi leaders groups, or similar reference groups that were conducted as part of stage three of the process; and
- d. provide an assessment and recommendation on the party or parties that are best placed to make a decision on the appropriate response to the harmful organism or pathway.

MPI's final report will be provided to the applicant(s) for review and comment before it is submitted to the Minister.

Criteria for the Minister to determine who to assign responsibility for decisions

The Minister will have regard to the following criteria to determine which party or parties are best placed to make decisions on a harmful organism or pathway:

- a. which party or parties is best placed to achieve the potential intermediate outcomes for the harmful organism or pathway;
- b. which party or parties is accountable to the parties that are affected or potentially affected by the harmful organism or pathway, and/or which party or parties would benefit from its management;
- c. which party or parties has access, or can gain access, to any necessary regulatory powers and whether these can be delegated;
- d. which party or parties is best placed to make a sound decision about intervention; and
- e. any other matters that the Minister considers relevant.

Where a partnership approach is required for the issue, the Minister will determine whether a lead decision maker or joint leads would be accountable for making decisions on the appropriate response to the harmful organism or pathway.

Questions

- Is the level of collective interest the main criteria for the Minister?

Conflicts of interest

To address potential conflicts of interest where MPI is involved either as an applicant or as a potential recipient of the assignment, the Minister may address perceived conflicts of interest in a manner that he or she deems to be appropriate for the issue. This may include requesting an independent review to ensure the advice provided by MPI is balanced and fair. The applicant(s) will be provided with any independent reports that are carried out.

Questions

- Does the proposed process adequately address potential conflicts of interest?

1.2.5 Stage Five: Minister makes a decision (one to three weeks)

The Minister will take into account the application, the preliminary and final reports from MPI, the outcome of any consultation, comments from the applicant(s) on MPI's reports, and any independent advice. The Minister may also receive further advice from any other party he or she deems to be relevant.

The Minister must communicate his or her decision in writing to the applicant(s) and the party that will be assigned responsibility a decision (if it differs from the applicant).

Assignment of responsibility to a government agency or regional council

Where the Minister assigns responsibility for decisions to a government agency or regional council, the Minister's decision will be legally binding and the agency or council cannot re-assign the role to another party. The Minister may specify a timeframe in which the party must make a decision on the issue.

The government agency or regional council must provide formal notification to the Minister in writing of their decision on the harmful organism and pathway and the nature of the proposed management programme if the decision is that action is required.

Assignment of responsibility to a private party

If the Minister assigns responsibility for decisions to a private party, such as an industry organisation, they are not legally bound to make a decision.

If responsibility is assigned to a private party the Minister will write to the party:

- a. inviting them to be the lead decision maker for the issue regarding the harmful organism or pathway and suggesting a timeframe for decisions; and
- b. requesting that the party indicate whether they will accept or reject the role and the timeframe for when they must notify the Minister of this.

If the private party disagrees with the Minister's assignment, they may request that the Minister re-assign the role to another party.

1.2.6 Stage Six: Public notification of the assignment (one to three weeks)

The Minister will advise of the assignment of responsibility for a decision on a harmful organism or pathway by issuing a notice in the New Zealand Gazette. MPI will also notify the assignment by other means it considers appropriate and effective.

As MPI is the government agency that is responsible for facilitating national coordination and communication amongst those involved in pest management they will ensure that:

- a. the decisions made by the Minister are communicated to the affected parties; and
- b. a public register is made available of all the Minister's decisions and subsequent decisions made by the party or parties that are assigned responsibility is made available.

Questions

- What level of obligations should there be for notification of the party assigned decision making responsibilities?

1.3 REVIEW OF THE PROCESS

The process for the Minister to assign responsibility for a decision on a harmful organism or pathway will be reviewed by MPI following its initial use to ensure that the regulations are functioning as intended under the Biosecurity Act.

If an issue has been identified with the process then this will be addressed as part of the initial review and MPI may propose that the Government amend the regulations if deemed necessary. The parties involved in the pest management system will be consulted on any potential changes to the process.

Questions

- Is the review process described above adequate?

Appendix 1

Process for the Minister for Primary Industries to assign responsibility for a decision on the appropriate response to a harmful organism or pathway

Stage 1: Application

The process is triggered by any person submitting a written application to the Minister requesting that he or she assign responsibility for a decision on the appropriate response to a harmful organism or pathway.



Stage 2: Minister receives preliminary advice (2 - 3 weeks)

The Ministry for Primary Industries (MPI) will provide preliminary advice to the Minister in the form of a report which defines the issue, identifies affected parties, suggests a likely intermediate outcome for the issue, recommend any additional consultation, and any legislative requirements. The report will be provided to the applicant for comment before it is submitted to the Minister.



Stage 3: Consultation (2 - 6 weeks)

If the Minister accepts the application, he or she will consult on the issue before they assign responsibility for decisions to a party. The Minister through MPI will identify and invited the affected parties (including the parties who may be assigned responsibility) to provide comment on the issue.



Stage 4: Minister receives final advice (2 – 6 weeks)

MPI will provide a final report to the Minister recommending a likely intermediate outcome for the issue, whether collective action is required, the outcome of consultation and discussions with affected parties, and an assessment of the party to be assigned responsibility. The report will be provided to the applicant for comment before it is submitted to the Minister.



Stage 5: Minister makes a decision (1 – 3 weeks)

The Minister will take into account the application, preliminary and final MPI reports, the outcome of consultation, the final MPI report, and any independent advice when making his or her decision on whom to assign responsibility for decisions. The Minister will communicate his or her decision in writing to the applicant and the party who will be assigned responsibility for decisions (if they differ from the applicant).



Stage 6: Public notification of the assignment (1 – 3 weeks)

The Minister will advise of the assignment of responsibility for decisions by issuing a notice in the New Zealand Gazette. MPI will ensure that the Minister's decision is communicated to affected parties.