

Biosecurity (Small Scale Organism Management) Amendment Order 2009

Regulatory Impact Statement

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Executive Summary

The Biosecurity Act 1993 allows regional councils to use small scale organism management programmes (small scale programmes) to respond to unwanted organism incursions occurring in their region between five-yearly regional pest management strategy (RPMS) reviews. The Biosecurity (Small Scale Organism Management) Order 1993 specifies that the maximum amount a regional council may spend on a small scale programme is \$100 000.

Currently many regional councils are making limited use of small scale programmes because:

- the maximum amount regional councils can spend on small scale programmes is too low;
- they do not properly understand the role of small scale programmes in the regional pest management system; and/or
- they have found alternative ways to manage the unwanted organisms outside of a RPMS.

If the problem is left unaddressed, regional councils will have limited opportunities to control or eradicate unwanted organisms in their region between RPMS reviews. This may allow unwanted organisms to become widely established and spread, creating significant environmental, economic, social, cultural and health impacts, and costs for New Zealand.

The preferred option is to increase the maximum amount regional councils may spend on a small scale programme to \$500 000 and provide regional councils with explanatory material outlining when and how to use small scale programmes consistently with the Biosecurity Act and Local Government Act 2002. The proposed \$500 000 limit attempts to strike an appropriate balance between giving regional councils more ability to eradicate or effectively control unwanted organism incursions between RPMS reviews and providing a guide to regional councils as to what constitutes a small response. The Ministry of Agriculture and Forestry (MAF) Biosecurity New Zealand will review the amount in 2015 to ensure that \$500 000 is an appropriate limit.

Adequacy statement

MAF Biosecurity New Zealand has reviewed this regulatory impact statement and considers it to be adequate according to the adequacy criteria.

Status quo and Problem

BACKGROUND AND PEST MANAGEMENT CONTEXT

The Biosecurity Act provides for regional councils to establish regional pest management strategies that allow regional councils to access certain powers to manage a single pest, or multiple pests. It sets out the process regional councils must follow, and provides that RPMSs may last for a maximum of five years. A RPMS can be reviewed at any time but, as there is a substantial and resource intensive process involved with developing one, they are usually reviewed towards the end of the five year period.

SMALL SCALE ORGANISM MANAGEMENT PROGRAMMES

If an unwanted organism emerges in the region during the five year period, regional councils can use section 100 of the Biosecurity Act to declare a small scale programme. This gives regional councils access to Biosecurity Act powers, allowing them to respond to unwanted organisms quickly and effectively, before they can spread. If measures are still required to manage the organism when the RPMS is reviewed, the regional council may add the organism to their RPMS.

Regional councils may undertake small scale programmes if satisfied that:

- the unwanted organism could cause serious and adverse unintended effects unless early action to control it is taken; and
- the organism can be eradicated or controlled effectively within three years of commencing measures to control the organism because:
 - distribution of the organism is limited; and
 - technical means to control the organism are available; and
- measures (including any compensation payments) are likely to cost less than an amount prescribed by Order in Council.

The three criteria guide regional councils on what type of response should be considered a small scale response. The financial limit provides the most definite and visible guidance. The other criteria require some analysis and a judgment call to be made.

The maximum amount regional councils can spend on a small scale programme is specified in the Biosecurity (Small Scale Organism Management) Order 1993. The current limit is \$100 000, which has not been revisited since the Order was made in 1993. The real value of this in today's terms is around \$70,000 when adjusted for inflation.

Unlike with a RPMS, regional councils do not have to undertake a formal cost benefit analysis to establish a small scale programme. This creates a risk that resources are misallocated from higher priority activities to a small scale programme. However, this risk is reduced by the section 100 criteria that require councils to do some analysis of the impacts of the unwanted organism to be satisfied that the organism will have serious adverse effects, and some analysis of the response to be satisfied that the unwanted organism can be addressed within the \$100,000 financial limit.

Problem Definition

Regional councils are not making enough use of small scale programmes. This means that regional councils have a limited ability to effectively control or eradicate unwanted organism incursions between regional pest management strategy reviews. Regional councils do not use small scale programmes more often because:

- The amount regional councils can spend on small scale programmes is too low. To effectively manage an unwanted organism, regional councils must take measures to eradicate or control the unwanted organism. This may require paying compensation to those affected by the regional councils' actions, in addition to the costs associated with managing the organism.

Environment Canterbury Chilean Needle Grass small scale programme

Environment Canterbury is responding to Chilean Needle Grass using a small scale programme. Pest management activities involve preventing Chilean Needle Grass from spreading, and eradicating it where it has been found. Four months into the programme, Environment Canterbury has already spent \$45,000, and will likely need to spend more than \$100 000 to complete the programme.

Chilean Needle Grass is threatening the viability of North Canterbury sheep farming, especially in the hill country. Controlling the spread requires that hay, stock and machinery are not removed from contaminated properties between November and March. Environment Canterbury may have to compensate land owners for the movement restrictions. Eradication and control measures may require significant expenditure from Environment Canterbury.

- Some regional councils do not understand the purpose of small scale programmes, when they can and should be used, and how to use them in conjunction with the other tools in the Biosecurity Act.
- Some regional councils have found alternative ways to manage unwanted organisms outside of a RPMS. However, these alternative ways can only be used in limited circumstances such as where the regional council has a landowner's consent to undertake pest management. Without the landowner's consent, the regional councils would need to access Biosecurity Act powers.

The limited use of small scale programmes risks unwanted organisms becoming widely established and spreading, which may create environmental, economic, health, social and cultural costs and impacts for New Zealand. There is also a risk that central government could appear to be unsupportive of regional council pest management.

Objectives

The policy objectives are to:

- improve regional councils' ability to eradicate or effectively control unwanted organism incursions between RPMS reviews; and
- reduce the impact of unwanted organisms on regions in New Zealand, by preventing establishment or reducing spread of unwanted organisms within and between regions in New Zealand.

Alternative Options

REMOVE THE FINANCIAL LIMIT

This option would remove the limit on the amount that regional councils may spend on small scale programmes. MAF Biosecurity New Zealand would provide regional councils with explanatory material outlining when and how to use small scale programmes appropriately. As part of this, MAF Biosecurity New Zealand would work with the Department of Internal Affairs to provide guidance on allocating funding for small scale programmes within the provisions of the Local Government Act.

Net benefits

This option could result in significant benefits for New Zealand, as it would increase opportunities for regional councils to eradicate or effectively control unwanted organism incursions between RPMS reviews, reducing the risks and costs associated with unwanted organisms.

This option aligns with MAF Biosecurity New Zealand's role in facilitating and encouraging the management of pests, as it would give regional councils more opportunities to manage unwanted organisms. The relationship between central and regional government has matured since 1993, and therefore regional councils can be entrusted with more financial discretion. However, we do not consider it is appropriate for the limit to be completely removed, and for regional councils to have full financial discretion for small scale programmes. The financial limit is very visible and is the most definite criterion to ensure small scale programmes are limited to being used only for small scale incursions. Removing the limit provides less guidance to regional councils on what is reasonable to classify as a small scale programme.

The process to declare a small scale programme does not require a formal cost benefit analysis, and therefore there is a risk that resources are misallocated from higher priority activities to a small scale programme. Under this option, the risk of resource misallocation increases from low to moderate. Section 100 of the Act would only require a minimal level of analysis by requiring regional councils to consider the organism's potential to cause serious and adverse unintended effects unless early action to control it is taken, but not requiring them to consider whether it can be addressed within a financial limit.

Enacting this option would involve relatively minor regulatory changes and implementation costs. Preparing advice for regional councils on the use of small scale programmes would require some resources from MAF Biosecurity New Zealand and the Department of Internal Affairs. Additional resources would be required to provide oversight and ongoing guidance to regional councils to ensure that the provisions are not being misused. These resources would be provided through departmental baselines.

AMEND THE BIOSECURITY ACT TO ALLOW AMENDMENTS TO REGIONAL PEST MANAGEMENT STRATEGIES FOR UNWANTED ORGANISM INCURSIONS THAT OCCUR BETWEEN RPMS REVIEWS

This option would allow RPMSs to be amended between formal statutory reviews to include unwanted organism incursions, without requiring the whole strategy to be reviewed.

Appropriate conditions of use would need to be determined. The amendment would need to be accompanied by guidance on using minor amendments to RPMSs for unwanted organism incursions in conjunction with the other tools in the Biosecurity Act.

Net benefits

This option aligns with MAF Biosecurity New Zealand's role in facilitating and encouraging pest management. It gives regional councils more opportunities to manage unwanted organisms. In addition, this option would simplify the existing regional pest management system by including all pest management in RPMSs.

Amending the Biosecurity Act would take a significant period of time. In the meantime, regional councils may be unable to successfully complete small scale programmes.

We have not thoroughly considered this option, and consider that if it is not developed and implemented correctly, regional councils may make inappropriate use of the tool, undermining the RPMS system. There is an opportunity to properly consider this option in the *Future of Pest Management* project that will consider the respective roles of regional pest management strategies and small scale programmes in detail.

PREFERRED OPTION: INCREASE THE MAXIMUM AMOUNT REGIONAL COUNCILS MAY SPEND ON A SMALL SCALE PROGRAMME TO \$500 000

This option would increase the amount prescribed by the Biosecurity (Small Scale Organism Management) Order to \$500 000. The increase would be accompanied with explanatory material for regional councils outlining when and how to use small scale programmes appropriately. As part of this, MAF Biosecurity New Zealand would work with the Department of Internal Affairs to provide guidance on allocating funding for small scale programmes within the provisions of the Local Government Act.

Net Benefits

This option could result in significant benefits for New Zealand, as it would increase opportunities for regional councils to eradicate or effectively control unwanted organism incursions between RPMS reviews, reducing the risks and costs associated with unwanted organisms.

This option aligns with MAF Biosecurity New Zealand's role in facilitating and encouraging the management of pests, as it would improve the opportunities for regional councils to manage unwanted organisms. The relationship between central and regional government has matured since 1993, and therefore regional councils can be entrusted with more financial discretion. We consider that it is important that there is a limit set, as it provides a clear guide to regional councils on what level of response is suitable for a small scale programme. We consider that an increase to \$500 000 would be reasonable, given the additional accountability measures that regional councils are subject to under the Local Government Act.

The Local Government Act provides that regional councils must adopt a policy setting out the thresholds or criteria they use to determine significant expenditure. Where spending triggers the significance policy, regional councils must follow a special consultative procedure. This can be costly and delay when regional councils can start their small scale programmes. Local Government New Zealand commented that spending \$500 000 is likely to trigger the “significance” threshold. However, if regional councils have established contingency funds in their previous annual plans, they will not have to follow the special consultative procedure as they would have already consulted with the community. The advice we will provide, in conjunction with the Department of Internal Affairs, will help regional councils to fund small scale programmes without delay.

The process to declare a small scale programme does not require a cost benefit analysis, and therefore there is an increased risk that regional councils would misallocate their pest management funding from higher priority activities to small scale programmes. However, we consider this risk is low. The criteria in section 100 of the Act would require regional councils to do some analysis in order to be satisfied that:

- the impacts of the unwanted organism will have serious adverse effects; and
- the unwanted organism can be eradicated or controlled effectively within the proposed \$500 000 financial limit; and
- the organism can be eradicated or controlled effectively within three years of starting the response because the organism is limited in distribution and technical means to control the organism are available.

We consider it is desirable to review the amount in five years to ensure that \$500 000 is an appropriate limit. Enacting this option involves relatively minor regulatory changes and implementation costs. Preparing advice for regional councils on the use of small scale programmes will require some resources from MAF Biosecurity New Zealand and the Department of Internal Affairs. This option will not be very resource intensive to implement and can be managed through departmental baselines.

Implementation and Review

The changes will come into force 28 days from the date of notification in the Gazette. MAF Biosecurity New Zealand will notify regional councils of the change and will provide regional councils with explanatory material outlining when and how to use small scale programmes appropriately, as well as guidance on allocating funding for small scale programmes within the provisions of the Local Government Act 2002.

MAF Biosecurity New Zealand will review regional council’s use of small scale programmes in 2015 to determine whether:

- use of small scale programmes has changed;
- the limit is appropriate for responding to small scale incursions of unwanted organisms;
- the limit should be re-adjusted to take into account inflation over the period.

MAF Biosecurity New Zealand is undertaking a *Future of Pest Management* project, which will consider the respective roles of regional pest management strategies and small scale programmes within the wider pest management system. This will create an opportunity to review how regional councils can respond to unwanted organisms and pests in their region.

Consultation

MAF Biosecurity New Zealand consulted with all 16 regional councils, the Department of Conservation, the Department of Internal Affairs and Local Government New Zealand. All supported increasing the amount to \$500,000. The Department of Internal Affairs considered that more guidance on accountability measures is needed and this has been included in the preferred option.