

Chair, Cabinet Economic Growth and Infrastructure Committee

MANAGING PESTS IN NEW ZEALAND: DISCUSSION PAPER AND LEGISLATIVE CHANGES

Proposal

1. This paper seeks approval to release the *Pest Management Proposed National Plan of Action 2010 – 2035* for public consultation. The Plan of Action contains the key changes needed to make pest management systems fit for purpose over the next 25 years.
2. This paper also seeks policy approval in principle for pest management amendments to the Biosecurity Act, subject to the outcomes of a final round of public consultation on the Plan of Action. It should be read alongside the related paper *Biosecurity Act 1993: Approval for Amendments*, also for consideration at this meeting.

Executive summary

3. Established pests cause significant impacts to New Zealand's economy, environment and human health. The total costs have been estimated at \$1.87 billion per year, including \$1.15 billion of lost production and \$719 million in direct costs preventing pests from arriving in New Zealand and managing them once they are here.
4. New Zealand's pest management system is complex, due to the biological nature of pests and the impacts that they have on different values, and the many parties involved in managing pests.
5. 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 should not;
 - some pest management is not as effective as it could be; and
 - some costs are not fairly distributed.
6. The major participants in pest management have been working since September 2008 to develop a Plan of Action that recommends changes to ensure the pest management system is fit for purpose for the next 25 years. I am seeking to release this Plan of Action for a final round of public consultation following the extensive consultation with affected organisations.

7. The key proposed changes in the Plan of Action include:
 - providing national policy direction to signal national priorities and improve the consistency and rigour of regional pest management strategies;
 - binding the Crown to good neighbour obligations under regional pest management strategies;
 - removing barriers to developing and reviewing pest management strategies;
 - providing a way to assign lead accountability for a pest issue where this is unclear; and
 - establishing a “toolbox” to ensure that pest control and monitoring tools are available in future.
8. These and other changes will collectively ensure that New Zealand will get better value for money in pest management.
9. Implementing some of the changes will require amendments to the Biosecurity Act 1993. Although the outcomes of consultation cannot be pre-judged, officials consider there will be broad public support for the Plan of Action as the major participants in pest management have been involved in developing the proposals. Therefore, it is not premature for legislative drafting to proceed based on the proposals in this paper so they can be incorporated into the Biosecurity Amendment Bill that will give effect to the proposals in the related paper *Biosecurity Act 1993: Approval for Amendments*. Final policy approvals will be sought once consultation on the Plan of Action is complete, and before the Bill is introduced.

Background

10. Established pests have the potential to cause significant impacts to New Zealand’s economy, environment and human health. The output losses caused by pest impacts on primary production are estimated at \$1.15 billion per year, with additional environmental and socio-cultural impacts that are difficult to estimate. On top of this, Government agencies and other participants in the biosecurity system spend \$719 million (excluding GST) as ‘defensive expenditure’ – to prevent pests and diseases entering New Zealand and managing their impacts once they are here. Table 1 shows a breakdown of annual defensive expenditure.

Table 1: New Zealand's total expenditure to prevent pests and diseases entering New Zealand and managing existing pests' impacts

	Annual Costs (2008/09) \$mill
MAF Biosecurity New Zealand	
border clearance	65.4
surveillance and response	45.4
standards, approvals and assurance, enforcement and policy advice	39.4
contribution to the Bovine Tuberculosis national pest management strategy	30.7
Department of Conservation	
pest/weed control as part of management of natural heritage	53.3
contribution to regional pest management strategies	2.8
Land Information New Zealand: contribution to regional pest management strategies	1.4
Biosecurity science research	37.0
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Central Government defensive expenditure (excluding GST)	275.4
Regional councils	36.9
Private sector	407.0
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Total annual defensive expenditure (excluding GST)	719.3

11. Over the last two decades significant changes have occurred to the way the biosecurity system is organised, most recently with the 2003 Biosecurity Strategy, which changed how biosecurity responsibilities were co-ordinated. However, there has been no conscious design of the pest management part of the system to ensure that it is achieving the most effective and efficient pest management.

Overview of current pest management system

12. 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 economic, environmental, human health and socio-cultural values.
13. Although the Ministry of Agriculture and Forestry (MAF) is responsible for pest management oversight and leadership, regional councils have a crucial role. All regional councils have established pest management strategies under the Biosecurity Act, and regional councils collectively spend about \$37 million per year on pest management. Their influence is even greater than this as they are the primary interface with industry and private landowners, who contribute a further \$407 million per year.
14. 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.

15. The pest management legal framework is based on the concept that those with an interest to act will do so. The assumption is 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 that those affected have the necessary powers to act collectively and prevent free-riding. Where the benefits of pest management fall on a region or the nation as a whole, regional or central government will lead or contribute.

Current problems

16. 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 should not;
 - some pest management is not as effective as it could be; and
 - some costs are not fairly distributed.
17. 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.
18. Overall the reports found that New Zealand's pest management systems are well advanced but identified the following key areas for improvement:
 - a. pest management roles and accountabilities are not clear enough;
 - b. Crown obligations as a 'good neighbour' landowner do not match those of other parties;
 - c. the legislation underpinning pest management activities is outdated;
 - d. physical control and monitoring tools are insufficient for future needs; and
 - e. collective action and participation is insufficient i.e. the costs of collaborating are too high.
19. Central and regional government agencies, pest management experts, industry and Maori have been working together to address these problems since September 2008 under a single project. The objectives for the pest management system are that it is effective, adaptive, focussed on outcomes and based on strong relationships.

Solutions: Plan of Action and legislative amendments

20. In this paper I propose amendments to improve the pest management system based on the attached Plan of Action. The Plan of Action aims to ensure pest management systems are fit for purpose for the next 25 years and captures all of the proposed legislative and non-legislative changes needed to do this. It has been developed by key organisations within pest management, including MAF, Department of Conservation, Department of Internal Affairs, regional councils, Maori and industry representatives. I am seeking Cabinet approval to release the Plan of Action for public consultation.

21. The Plan of Action's focus is on making it easier for all parties to **'act collectively in New Zealand's best interests'**. It needs to be easier for parties to work together to manage pests where they can make the biggest difference. The Plan of Action proposes a range of ways to make this happen. The key changes proposed in the Plan of Action are described in more detail in the following sections of the paper.
22. I also propose Cabinet agree in principle to the legislative amendments ahead of a final round of public consultation on the Plan of Action, so that they can be included in the Biosecurity Amendment Bill. Although the outcomes of consultation cannot be pre-judged, officials consider there will be broad public support for the Plan of Action as the major participants in pest management have been involved in developing the proposals. I am seeking policy approval for the Biosecurity Amendment Bill in a companion paper (refer *Biosecurity Act 1993: Approval for Amendments*), and propose that drafting of the pest management amendments proceeds based on the 'in principle' decisions. Final policy approvals will be sought from the Cabinet Economic Growth and Infrastructure by October 2010, once consultation on the Plan of Action is complete, and before the Bill is introduced.
23. 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.

Better tools for collective action

24. National and regional pest management strategies established under the Biosecurity Act provide a mechanism for communities to agree on the control of pests (including protection of sites and reduction of spread by human activities) 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.
25. But:
 - a. there is no national direction for regional pest management strategies and so there are inconsistencies between different regional councils' management of pests and approach to analysis;
 - b. Crown landowning agencies do not fully participate in regional pest management strategies;
 - c. there is a lack of flexibility in the process for developing and reviewing pest management strategies; and
 - d. there is an inability to manage the movement of risk goods and craft within New Zealand.
26. The result is that pests are not always being managed in the most effective or efficient way. Proposed improvements are discussed below.

Providing national policy direction and Crown landowner participation in regional pest management strategies

27. In the absence of any national policy direction, regional councils have developed regional pest management strategies using individual approaches, resulting in inconsistencies between regions and tensions between the strategies and the national priorities of Crown agencies. For example, a pest plant species may be banned from sale in one region, but can still be grown and sold in another. In addition, some regional strategies are considered to lack sufficient rigour, for example a strategy includes pests where the feasibility of the proposed actions is questionable or the programmes are low value. This situation undermines the credibility of regional pest management strategies and increases their cost.
28. The Crown is not required to meet regional pest management strategy rules, unlike other landowners. 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]. The Government currently allocates \$4.2 million to Department of Conservation and Land Information New Zealand (as the main land management agencies) specifically for this purpose. Land managing agencies contribute to meeting regional pest management strategies to varying degrees through their own operations. However, this is collectively insufficient to meet the requirements of the 1995 Cabinet decision.
29. This situation undermines the effectiveness of regional pest management strategies and the 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.
30. Maintaining this 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. For example, landowners are reluctant to invest in control of key pests, such as rabbits or wilding pines, where their efforts are undermined by reinvasion from Crown land.

Proposed changes

31. I propose to:
 - a. develop national policy direction to help improve the quality of pest management strategies;
 - b. amend the Biosecurity Act to enable this national policy direction to be issued and require strategies to be aligned with this; and
 - c. require the Crown to meet “good neighbour” obligations in regional pest management strategies once they are reviewed and aligned with the national policy direction.

National Policy Direction

32. I propose that national policy direction is developed that would set out the national priorities and processes to improve the rigour of pest management strategies. It would ensure that national priorities are clearly signalled and that better pest management strategies are developed over time.
33. At this stage, officials envisage the national policy direction could include:
- a. principles for when central and regional government should intervene;
 - b. principles for who should fund what;
 - c. national priorities for pest management;
 - d. a process for determining what should reasonably be included in national and regional pest management strategies and whether a pest programme meets the criteria under the Biosecurity Act;
 - e. mandatory tests of the value of potential pest programmes and determining reasonable requirements, including how to set good neighbour obligations;
 - f. consistent names for pest programmes with the same objectives; and
 - g. requirements for recording and reporting on performance of pest programmes to support a shared performance measurement system (see section *Measuring performance of pest programmes and the overall system*).
34. I propose that officials report back to the Cabinet Economic Growth and Infrastructure Committee on the content of the proposed national policy direction by October 2010, when approval of the final Plan of Action is sought.

Power to issue National Policy Direction

35. I propose that the Biosecurity Act is amended to provide for national policy direction to be issued, and to require both national and regional pest management strategies to be aligned with the national policy direction. The national policy direction would be developed collaboratively with Crown land management agencies and regional government, and would need to be publicly consulted on before it is finalised and approval sought from Cabinet.
36. Under amendments proposed to the Biosecurity Act, 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. In the case of national pest management strategies, the Minister would need to be satisfied that the strategy rules are aligned with the national policy direction before recommending that the strategy is made.

Binding the Crown to good neighbour obligations

37. I propose that the Crown be bound to “good neighbour rules” in regional pest management strategies. Good neighbour rules are those that seek to manage pests that cause external costs to other land holders. The Crown would be

bound to good neighbour rules in regional pest management strategies once the strategies have been aligned with the national policy direction. This means that **all** land occupiers, regardless of tenure, will be required to meet good neighbour rules under regional pest management strategies.

38. This proposal would affect the Department of Conservation, Land Information New Zealand, New Zealand Defence Force, New Zealand Transport Agency, Department of Corrections, Ministry of Education, MAF Crown Forestry, and Ministry of Justice. Crown entities, state owned enterprises and land that is leased or licensed are already subject to good neighbour regional pest management strategy rules.
39. Crown land management agencies are concerned about the unknown potential financial costs of complying with regional pest management strategies, and the impact that being required to comply would have on the Crown's priorities, including land management, biodiversity, defence and other parts of the biosecurity system.
40. The true costs of binding the Crown to regional pest management strategies will only be known once the national policy direction is developed and regional pest management strategies have been aligned with this. This is likely to take three to five years.
41. Based on current regional pest management strategies, regional councils estimate a shortfall of \$1.7 million per year for Department of Conservation and Land Information New Zealand to meet good neighbour obligations. Department of Conservation and Land Information New Zealand estimate this shortfall to be \$6.4 million per year, which is in addition to the \$4.2 million per year already allocated for this purpose. Land Information New Zealand has indicated that its funding of \$1.4 million per year to manage pests on its land will not be sufficient if the level of work required increases.
42. Other Crown land management agencies may also have increased costs, but there are no estimates for these. Any shortfall would need to be found either with new funding or from within baselines, which may impact on outcomes other than biosecurity.
43. The key way of managing the Crown's fiscal risk is the development of the national policy direction. This would ensure that the development of regional pest management strategies follows a consistent and robust process, so that they are managing the right pests in the most efficient and effective way. It will also ensure better alignment of national and regional priorities. Although some Crown funding may be diverted from national to regional priorities, MAF considers that this risk will be outweighed by the benefits of better regional council and landowner engagement in the pest management system.
44. As a result of binding the Crown and the national policy direction, I would expect improved engagement between the Crown and regional councils when regional pest management strategies are developed, and more efficient and effective activities over time. Binding the Crown would also increase the likelihood that

regional councils and communities continue to willingly participate in the biosecurity system.

45. 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'. Once regional pest management strategies are aligned with the national policy direction, MAF considers that the proposal to bind the Crown will not unreasonably impact on the efficient functioning of Government. This is because the national policy direction will help ensure funding is not diverted from higher to lower priorities.
46. MAF considers that the benefits of more effective and efficient regional pest management outweigh the residual financial risks to the Crown of being bound, as they are only the same kind of risks that all other landowners face now.

Lack of flexibility

47. The requirement to publicly notify all pest management strategies acts as a barrier to their development, as it is a costly and time-consuming process. In addition, the Biosecurity Act assumes that a Board of Inquiry will be established for proposed national pest management strategies in all but the most straightforward of cases. For regional pest management strategies, an Inquiry is required in all cases, regardless of whether those affected agree with the strategy or not.
48. Providing for a public process is an important aspect of ensuring that regulatory requirements are appropriate before they are imposed. However, in many cases regulatory requirements are imposed on only a discrete group of individuals who are engaged in developing the proposal, and therefore full public notification and an Inquiry is not necessary.
49. Also, once a strategy is in place, it is inflexible and cannot be materially changed without reviewing the entire strategy. This involves following the same process as putting the strategy in place, and means that aspects of the strategy that do not need to be changed or reviewed are again able to be contested through the public process. This contrasts to plans under the Resource Management Act 1991 where parts of the plan can be reviewed without the requirement to review the entire plan.

Proposed changes

50. I propose to amend the Biosecurity Act to allow for more flexible pest management strategies, by:
 - providing the Minister and regional council with greater discretion on whether and how a proposal is publicly notified, and who is 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 one is necessary (considering the significance of the issue and whether a significant body of persons oppose the strategy).
- allowing for partial review of pest management strategies where contents may be added to or removed from a pest management strategy without requiring a full statutory review of the whole strategy.
- allowing for aspects of a regional pest management strategy that are not under appeal to the Environment Court to become operative.
- 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

51. Pests can be spread between places through human activity. For example, moving aquaculture equipment without cleaning can inadvertently introduce pests to the new location. The tools in the Biosecurity 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 (pathway management). This is similar to how MAF manages the movement of risk goods into New Zealand via its “import health standards” or other import rules.
52. 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.
53. 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.

Proposed changes

54. I propose to amend the Biosecurity 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 one of these instruments would follow a similar process to developing a national pest management strategy, which involves a risk / cost-benefit analysis, appropriate consultation on the proposal, and possibly a public hearing or Board of Inquiry (if required given the effects, scale or nature of the proposed controls).

55. It is intended that this instrument 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 Sub-Antarctic Islands from new marine pests via vessel movement controls.
56. It is proposed that these instruments are established as regulations that can apply nationally or in a particular regional area only. The regulations could cover movement of any risk goods / craft, or particular types of movement along risk pathways. They would not affect or duplicate the existing Health Act obligations in relation to controlling vectors of human diseases, for example mosquitoes.

Ensuring timely decisions

57. Pest management roles and responsibilities can be found in a number of statutes. Within these, the system has only a few mandatory roles and responsibilities, with the rest being discretionary and determined on a relatively ad hoc case-by-case basis.
58. This lack of clarity leads to debate between parties and delays in making decisions, resulting in pests costing New Zealand more than they should.
59. 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 of the spread of these trees. The problem frequently crosses regional boundaries, and some activities would ideally be co-ordinated across the areas where it is a problem.

Proposed changes

60. It is proposed that where no one assumed responsibility for a particular pest issue, or where the debate between participants is taking too long to resolve, the Minister for Biosecurity could assign accountability to a lead party. The Minister would also identify any other parties with an interest in the decision who would need to be involved. The decision on where lead accountability lies would include determining whether collective action is warranted and what that collective action should be broadly seeking to achieve (for example, national eradication of the pest, management of a high-risk pathway etc).
61. The Minister would require a party to make a decision about whether to take action – but could not require that party to make a particular decision or create an obligation to act. Ideally the Minister’s decision would be binding for all central and regional government agencies to make a decision.
62. 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 notice in the *New Zealand Gazette* issued by the Minister for Biosecurity.
63. It is proposed that in making this decision the Minister is advised by a small group of people (three to five) representing pest management participants.

Some organisations in the Future of Pest Management project consider that this group of people should become a statutory committee. MAF does not consider this latter step necessary.

Ensuring tools are available into the future

64. The availability of pest control tools may decrease over time if not carefully managed as:
- the public become increasingly opposed to the use of some tools (e.g. 1080) and / or their method of application (e.g. aerial spraying); and
 - the regulatory barriers to importing and / or registering new tools (e.g. chemicals and biological control agents) mean that it is uneconomic for manufacturers of these tools to enter the New Zealand market, given its small size.

65. The scope of these pest control tools include:
- physical control tools (chemical, mechanical and biological) available in New Zealand to manage pests;
 - surveillance and monitoring tools required to measure performance of particular pest programmes and the overall pest management system;
 - regulatory tools to enable parties to undertake pest management; and
 - ways to engage with communities on pest management and pest management tools.

Collectively, the pest control tools can be thought of as a 'toolbox'.

66. Developing tools for controlling and monitoring pests, and best practice for use of those tools tends to occur within individual organisations to varying degrees. The toolbox for pest management is fragmented across many organisations and information is often inaccessible, duplicated or conflicting. Inaccurate or incomplete information and poor standards of tool use by any one party can undermine acceptability of and access to the tools, and can increase costs for all organisations.

Proposed changes

67. It is proposed that a governance group made up of representatives of major pest management stakeholders be established. The group would oversee the establishment of the toolbox and drive the centralisation and rationalisation of tool development and approval, guideline development and education where this adds net-benefits. This would involve co-ordinating and monitoring best practice guidelines for the safe, effective and legal use of tools and keeping a watching brief on tools used internationally that could be used in New Zealand.
68. Although this proposal was developed with the pest management system in mind, other parts of the biosecurity system use the same kind of tools, such as the use of methyl bromide as a treatment at the border. Therefore, it is

proposed that the toolbox applies biosecurity-system wide. There are no legislative changes needed to implement these changes to managing tools.

69. These changes to the management of the toolbox will result in more effective and efficient action on harmful organisms and avoid or reduce the risk that we lose access to critical tools.

Clearer roles and accountabilities

70. MAF is responsible for oversight and leadership for pest management, and regional councils have a role in pest management in their regions. Pest management roles and accountabilities can be found in a number of statutes, although are missing from the Biosecurity Act. As a consequence, the many players involved in pest management have differing expectations about who is meant to be responsible for what.
71. 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.

Proposed changes

72. I propose that the functions of MAF and regional councils are specified in the Biosecurity Act. It is intended that the functions specified would not be limiting, but would indicate the core functions to be undertaken. The functions would not affect or derogate from the functions of agencies under other legislation (such as the functions of medical officers of health under the Health Act).
73. The following specific functions of MAF would be provided for:
- a. Acting as overall leader for the pest management system
 - b. Overseeing New Zealand's pest management system, including measuring overall system performance against outcomes
 - c. Facilitating communication and co-operation and co-ordinating those involved in pest management to enhance effectiveness, efficiency and equity of programmes
 - d. Overseeing or providing national pest and pathway management programmes to protect the public interest
74. The following specific functions of regional councils would be provided for:
- a. Acting as leader for pest management systems within a region
 - b. Ensuring that pest management in the region optimally contributes to relevant community and national strategies
 - c. Ensuring that their regional pest management strategies are aligned with the national policy direction
 - d. Facilitating communication and co-operation between those involved in pest management to enhance effectiveness, efficiency and equity of programmes

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

75. Some minor amendments and some further work are proposed later in this paper in relation to other pest management-related legislation.

Measuring performance of pest programmes and the overall system

76. In spite of the range and extent of pest management activities, there is no clear picture of how the overall pest management system is performing. For example, it is not clear how much the system is improving over time or which approaches are efficient and effective.

77. A shared performance measurement system will drive more effective and efficient pest management over time. Measuring overall system performance is needed to allow ongoing assessment of the effectiveness and efficiency of the substantial investment going into pest management, how well participants are working together, the level of public support and engagement in pest management, and what issues may require additional leadership or government intervention. This is consistent with the Government's desire to see greater reporting on performance in the public sector.

Proposed changes

78. MAF, Department of Conservation, regional councils, Animal Health Board and other stakeholders are developing an outcome-based performance measurement system for pest management in New Zealand. Many agencies are implementing their own outcome-based performance measurement systems to measure against their own outcomes. The pest management performance measurement system will complement these systems with a national set of agreed pest management specific outcomes.

79. A shared performance measurement system will not replace or duplicate the frameworks already developed by agencies (under the Public Finance Act) or regional councils. It should help drive more effective and efficient pest management, and better collective action and relationships by providing a consistent overall view as to the performance of the pest management system.

80. I propose that the national policy direction specifies requirements for recording and reporting on the performance of pest programmes to support the performance measurement system.

Maori engagement

81. Maori are significant stakeholders in all biosecurity activities and they are also significant landowners. Collective ownership of land poses unique challenges in pest management. There are opportunities to incorporate tikanga and matauranga Maori (Maori customary knowledge and way of doing things) into

the way pests are managed. It is important that pest managers can engage with tangata whenua in a way that works for both parties, and maximises benefits.

Proposed changes

82. It is proposed that a Maori advisory committee is established to support Maori engagement with MAF Biosecurity New Zealand on pest management issues, by providing advice and assistance on how to engage with Maori. Iwi organisations involved in the Future of Pest Management project recommended that the committee provide advice to the Minister for Biosecurity however I consider that it would provide more value advising MAF directly.
83. Iwi organisations would like to give statutory backing to this committee, because they consider it will give the committee greater mana. MAF does not consider it necessary for the committee to be statutory, as a non-statutory committee's advice would not carry any less weight, and it avoids the additional administrative burden and rigidity that a statutory committee creates.

Other legislative changes

84. There are a number of other legislative changes that are needed to ensure the effectiveness of the pest management system, discussed below. Those relating to Acts other than the Biosecurity Act are related to other biosecurity proposals in this paper, and will reduce duplication and confusion in the pest management system and improve its overall effectiveness. Officials therefore consider that their inclusion in the Biosecurity Amendment Bill will comply with the restrictions in Standing Orders on using one Bill to amend more than one Act. Officials will seek confirmation of this from the Office of the Clerk before the Bill is introduced.

Biosecurity Act – purpose of Part 5

85. Current Part 5 of the Biosecurity 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 pathways of spread or site-specific management.

Proposed change

86. 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 organisms* to include the pathways and vectors by which harmful organisms can spread.

Biosecurity Act – name of regulatory instrument

87. 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.

Proposed change

88. I propose to change the name of pest management strategies to pest management plans.

Ombudsmen Act 1975 – application to management agencies

89. A management agency under the Biosecurity Act is an organisation that is responsible for implementing a pest management strategy. The Biosecurity Act allows 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 Official Information legislation, body corporates are not.
90. 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 1982 applies to all organisations that are listed in Parts 1 and 2 of Schedule 1 of the Ombudsmen Act.

Proposed change

91. I propose 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.

Wild Animal Control Act 1977 – application to possums and wallabies

92. The Wild Animal Control Act's purpose is to control harmful species of introduced wild animals and regulate their hunting and farming. The Wild Animal Control Act currently covers deer, chamois, thar, wallabies, possums, wild pigs and wild goats.
93. Although regional councils may include these species in Biosecurity Act regional pest management strategies, they are also required to seek the Minister of Conservation's approval under the Wild Animal Control Act if any of these species are to be destroyed. In addition, regional councils must comply with the requirements of the Wild Animal Control Act when entering a property to control or inspect for wild animals, which is onerous and causes delays in management. The need to comply with two sets of legislative requirements undermines the efficiency and effectiveness of pest management for wild animal species.

94. There is a case to comprehensively review the interface between the Wild Animal Control and Biosecurity Acts, and this is scheduled to be done in the next few years. However, possums and wallabies are significant pests where they are present, and are no longer considered significant hunting resources. They would be better managed under the Biosecurity Act alone.

Proposed change

95. I propose to remove possums and wallabies from the Wild Animal Control Act, so that they can be more readily managed through regional pest management strategies under the Biosecurity Act. Any interest in hunting these species within a region can be represented through the regional pest management strategy development process.
96. The current controls for wallabies under the Wild Animal Control Act will need to be assessed to determine how they should be covered by the Biosecurity Act. I propose that MAF and Department of Conservation officials investigate this.

Wildlife Act 1953 – provisions for managing injurious birds

97. 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 seek the Director-General of Conservation’s agreement to their control plans.
98. The empowering provisions are no longer needed, as regional 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.

Proposed change

99. I propose to remove the provisions that apply to injurious birds from the Wildlife Act, as they are no longer required for regional councils to manage these birds. This would leave the Biosecurity Act as the mechanism for collective action, and make the control of the birds easier.

Interfaces between legislation that affects pest management

100. In addition to the changes above, the Plan of Action proposes a comprehensive review of overlapping pest management provisions in existing legislation, including the Biosecurity, Wild Animal Control, Wildlife, Conservation and Resource Management Acts. This review is proposed to occur in the next five years and will consider the relationships between these Acts and clarifying Parliament’s intentions for managing pests.

Consultation

101. The following departments were consulted on a draft version of this Cabinet paper – The Treasury; the State Services Commission; the New Zealand Customs Service; the Parliamentary Counsel Office; the Departments of Conservation, Corrections, Internal Affairs, Labour, and Prime Minister and Cabinet; the Ministries of Defence, Economic Development, Education, Environment, Fisheries, Foreign Affairs and Trade, Health, Justice, Research, Science and Technology, Tourism and Transport; Land Information New Zealand; the New Zealand Defence Force; the New Zealand Food Safety Authority and Te Puni Kokiri. The content of this paper has been revised to incorporate the departmental comments that were received.
102. Department of Internal Affairs is concerned that the national policy direction will require councils to undertake pest management activities that are not mandated by their ratepayers. If central government considers that a pest is of such national significance or public interest that it must be managed consistently across regions to a certain level, then central government should be responsible for funding and undertaking the management of that pest. This may include pests that are present only in one or a few regions, but are of national significance. Department of Internal Affairs also considers that it is also unclear how the proposed national policy fits with the mechanism of assigning lead accountability for a particular pest.

MAF response

103. As we advised Department of Internal Affairs, the national policy direction would not be used to make regional councils undertake central government responsibilities. The national policy direction may be used to ensure inaction by one region does not undermine the effectiveness of a pest management programme and to ensure regions contribute where there are regional benefits to a national programme (as occurs under the current Bovine Tuberculosis national pest management strategy). The paper proposes a separate method for determining which agency should have lead responsibility for particular pest management programmes and this rather than the national policy direction would be the primary means for resolving such matters. MAF suggests that Department of Internal Affairs, along with regional councils, is involved in developing the national policy direction.
104. The following agencies were also consulted in the preparation of this paper: The Environmental Risk Management Authority; the New Zealand Transport Agency; Maritime New Zealand; the Office of the Privacy Commissioner; and the Office of the Ombudsmen.
105. Department of Conservation, Department of Internal Affairs, Ministry of Health, New Zealand Food Safety Authority, Ministry of Fisheries, Land Information New Zealand, New Zealand Transport Agency, Local Government New Zealand, regional councils, iwi, industry and others, along with MAF have developed the proposals for pest management in this paper through a single project.

106. The legislative proposals have been discussed with stakeholders through two rounds of targeted consultation in late 2009 and early 2010. The consultation process comprised interactive workshop sessions, together with an opportunity for written comments, and was based around two Information Papers prepared by MAF.

Financial implications

107. Based on current regional pest management strategies, regional councils estimate a shortfall of \$1.7 million per year for Department of Conservation and Land Information New Zealand to meet good neighbour obligations. Department of Conservation and Land Information New Zealand estimate this shortfall to be \$6.4 million per year, which is in addition to the \$4.2 million per year already allocated for this purpose. Other Crown land management agencies may also have increased costs, but there are no estimates for these. There is considerable uncertainty around these figures as the actual costs depend on work to be done to develop the national policy direction and then aligning regional pest management strategies with this.

108. Aside from the above, there are no immediate or direct financial consequences of this paper. However, if implemented, some of the proposals will require additional resources, and others will result in savings across the pest management system. It is intended that additional resources required would be found from savings in other areas.

Human Rights implications

109. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

110. The legislative proposals in this paper are [omitted in accordance with sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act 1982]. This Bill is included in the 2010 Legislation Programme, [omitted in accordance with sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act 1982].

111. The Biosecurity Act is binding on the Crown, with one exception relating to regional pest management strategies. This paper seeks a decision on whether to change the Crown's legal position in relation to good neighbour obligations under regional pest management strategies.

Regulatory impact analysis

112. The Regulatory Impact Analysis requirements set out in Cabinet Office Circular CO (09) 8 apply. A Regulatory Impact Statement has been prepared for the proposals in this paper and the related paper *Biosecurity Act 1993: Approval for Amendments*. The Regulatory Impact Statement is attached to the related paper.

Quality of the Impact Analysis

113. Susan Keenan, Policy Manager MAF Biosecurity New Zealand, has reviewed the Regulatory Impact Statement prepared by MAF Biosecurity New Zealand and associated supporting material, and considers that the information and analysis summarised in the Regulatory Impact Statement meets the quality assurance criteria.

Consistency with the Government Statement of Regulation

114. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats noted in this Cabinet paper, the regulatory proposals recommended in this paper are consistent with the commitments in the Government Statement on Regulation.

Publicity

115. I propose to make a public announcement in relation to releasing the *Pest Management Proposed Plan of Action 2010 – 2035* for public consultation. I also propose to make a specific announcement on the decision about whether the Crown would be bound to good neighbour obligations in regional pest management strategies. MAF would manage the ongoing public communications and inform affected stakeholders of the decisions and rationale.

Recommendations

I recommend that the Economic Growth and Infrastructure Committee:

1. **note** that the loss in production caused by established pests is estimated at \$1.15 billion per year, and there are opportunities to improve the efficiency and effectiveness of how pests are managed;
2. **note** that a project has been underway since September 2008 involving central and regional government agencies, industry groups, iwi groups and others looking at ways of improving pest management and has developed a Plan of Action containing both legislative and non-legislative proposals;
3. **agree** to release the *Future of Pest Management Proposed Plan of Action 2010 – 2035* for public consultation;
4. **note** that decisions on legislative proposals are being sought in principle so that:
 - 4.1 amendments can be drafted alongside other amendments to the Biosecurity Act; and
 - 4.2 any changes required following public consultation can be made prior to the Biosecurity Amendment Bill being introduced;
5. **agree** that drafting of the legislative amendments proceeds based on these 'in principle' decisions;
6. **direct** MAF to seek final approval for the 'in principle' decisions in this paper when it reports back to the Cabinet Economic Growth and Infrastructure Committee by October 2010 on the final Plan of Action once consultation on the Plan of Action is complete;

Better tools for collective action

Providing national policy direction and Crown landowner participation in regional pest management strategies

7. **note** that there is currently no national direction for regional pest management strategies, resulting in inconsistencies between regions, variability in the value of pest management strategies, and tensions between the strategies and the national priorities of Crown agencies;
8. **note** that the Crown is currently not required to comply with rules in regional pest management strategies, and its voluntary contributions do not fully meet all requirements;
9. **note** that Crown land management agencies are concerned about the unknown potential costs of complying with good neighbour rules in regional pest management strategies, and the impact this may have on the Crown's priorities;

10. **note** that addressing the current situation would reduce a significant source of tension between the Crown and regional councils and increase the overall effectiveness of regional pest management strategies;
11. **agree** that the Biosecurity Act should be amended to provide for:
- 11.1 national policy direction to be issued that would set out national priorities and processes to improve the rigour of pest management strategies;
 - 11.2 national and regional pest management strategies to be required to be aligned with the national policy direction at the time of their next scheduled review;
 - 11.3 any rule in a national or regional pest management strategy that is not aligned to the national policy direction to have no effect once 11.1 and 11.2 have occurred;
 - 11.4 parties who wish to confirm whether any particular provision in a regional pest management strategy is aligned with the national policy direction may seek a decision from the Environment Court;
 - 11.5 the Minister or regional council to be required to confirm that a pest management strategy is aligned with the national policy direction prior to the strategy being made;
 - 11.6 the Crown be required to meet 'good neighbour' rules in regional pest management strategies, that is, rules that seek to manage pests that cause external costs to other land holders, once 11.1 and 11.2 have occurred;
12. **note** that the national policy direction would be the key way to manage the Crown's fiscal risk of meeting 'good neighbour' rules in regional pest management strategies, and officials envisage it could include:
- a. principles for when central and regional government should intervene;
 - b. principles for who should fund what;
 - c. national priorities for pest management;
 - d. a process for determining what should be reasonably included in national and regional pest management strategies and whether a pest programme meets the criteria under the Biosecurity Act;
 - e. mandatory tests of the value of potential pest programmes and determining reasonable requirements, including how to set good neighbour obligations;
 - f. consistent names for pest programmes with the same objectives; and
 - g. requirements for recording and reporting on performance of pest programmes to support a shared performance measurement system;
13. **agree in principle** to amend the Biosecurity Act to provide any Regulation-making powers necessary to implement the national policy direction;

14. **direct** MAF, in consultation with affected agencies, to develop the content of the proposed national policy direction and report back to the Cabinet Economic Growth and Infrastructure Committee by October 2010 when approval of the final Plan of Action is sought;

More flexible legislative tools

15. **agree in principle** to the following amendments to the Biosecurity Act for the purposes of making pest management strategies more flexible:

15.1 amending the notification and consultation provisions for national and regional pest management strategies so that the Minister and regional council have discretion over whether and how a proposal should be publicly notified, and who should be consulted on a proposed strategy 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;

15.2 amending the provisions for national pest management strategies so that the Minister is not required to hold a Board of Inquiry, but may do so if the Minister considers that one is necessary (considering the significance of the issue and whether a significant body of persons oppose the pest management strategy);

15.3 amending the provisions for regional pest management strategies so that the regional council is not required to hold an Inquiry, but may do so if the regional council considers that one is necessary (considering the significance of the issue and whether a significant body of persons oppose the pest management strategy);

15.4 adding a provision to allow for partial review of pest management strategies where contents may be added or removed without requiring a full statutory review of the strategy;

15.5 amending the provisions relating to the Environment Court so that aspects of a regional pest management strategy that are not under appeal may become operative;

15.6 amending the requirement for 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

16. **agree in principle** to a new provision allowing for Regulations to be made to manage the risks posed by the movement of risk goods and craft within New Zealand;

17. **note** that this tool is a domestic equivalent of MAF's current import health standard requirements for entry into New Zealand and is intended to be used for only the highest risk pathways of pest spread;

Ensuring timely decisions

18. **note** that the Plan of Action proposes that, where unclear accountability for an issue is causing delays, the Minister for Biosecurity may determine who should be accountable;

19. **agree in principle** to the following amendments to the Act for the purposes of ensuring timely decisions in pest management:

19.1 adding a provision for the Minister for Biosecurity to assign lead accountability for a particular pest issue as required;

19.2 adding a provision to require central and regional government agencies to make a decision on a pest issue where the Minister for Biosecurity has assigned them lead accountability;

19.3 adding a provision to enable the Minister for Biosecurity to issue a notice in the *New Zealand Gazette* setting out the process for assigning lead accountability;

20. **note** that the Plan of Action proposes that the Minister for Biosecurity is advised by a group of people representing pest management participants;

Ensuring tools are available into the future

21. **note** that the Plan of Action proposes the establishment of a governance group and toolbox manager to oversee a 'toolbox' to ensure that improved tools are available for use within New Zealand;

22. **note** that the toolbox will apply biosecurity-system wide and that no statutory changes are required to establish the governance group and manage the toolbox;

Clearer roles and accountabilities

23. **agree in principle** to the following amendments to the Act for the purposes of clarifying roles and accountabilities:

23.1 providing for the following specific functions for MAF:

- Acting as overall leader for the pest management system
- Overseeing 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 or providing national pest and pathway management programmes to protect the public interest

23.2 providing for the following specific functions for regional councils:

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

Measuring performance of pest programmes and overall system

24. **note** that the Plan of Action proposes that there be a performance measurement system for the pest management system;

Maori engagement

25. **note** that the Plan of Action proposes to establish a Maori advisory committee to provide MAF with advice on Maori issues in pest management;

26. **note** that MAF officials have considered whether the Maori advisory committee should be a statutory committee and concluded that this is not necessary;

Other legislative changes

27. **agree in principle** to the following other amendments to the Biosecurity Act:

27.1 amendment of the Purpose statement of Part 5 to extend it from providing *for the effective management or eradication of pests and unwanted organisms* to include pathways and vectors by which pests and unwanted organisms can spread.

27.2 amendment to change the name of pest management strategies to pest management plans;

27.3 any necessary consequential amendments and transitional provisions;

28. **agree in principle** to amend the Ombudsmen Act so that management agencies under the Biosecurity Act that are body corporates are subject to the Ombudsmen Act and Official Information Act;

29. **agree in principle** to amend the Wild Animal Control Act to exclude possums and wallabies;
30. **direct** MAF and Department of Conservation officials to assess how the current controls for wallabies should be transferred to the Biosecurity Act;
31. **agree in principle** to amend the Wildlife Act to remove the provisions that relate to local authorities' control of injurious birds;
32. **note** that the Plan of Action recommends a comprehensive review of overlapping pest management provisions in existing legislation to be done in the future;

Next steps

33. **note** that the 2010 Legislation Programme [omitted in accordance with sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act 1982];
34. **invite** the Minister for Biosecurity to provide drafting instructions to the Parliamentary Counsel Office for a Bill to give effect to the above legislative amendments;
35. **note** that MAF officials will seek confirmation from the Office of the Clerk before the Bill is introduced that amendments to the Ombudsmen, Wild Animal Control and Wildlife Acts may be included in the Biosecurity Amendment Bill without requiring agreement to introduce the Bill as an omnibus Bill;
36. **direct** MAF to report back to the Cabinet Economic Growth and Infrastructure Committee by October 2010 with the final Plan of Action, final decisions on the proposals for legislative amendments and contents of the national policy direction.

Hon David Carter
Minister for Biosecurity
/ / 2010