A COMPARATIVE ASSESSMENT OF EXISTING POLICIES ON INVASIVE SPECIES IN THE EU MEMBER STATES AND IN SELECTED OECD COUNTRIES

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Country Assessments
Annexes for OECD countries
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In association with

Contacts
Pierre Sonigo
Anne Turbé– Sandra Berman
BIO Intelligence Service
☏ + 33 1 53 90 11 80
pierre.sonigo@biois.com
anne.turbe@biois.com
sandra.berman@biois.com
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ANNEX 2: OECD COUNTRIES

1.1. AUSTRALIA

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Annex 1: Australian federation

The Australia federal system of government, with a Commonwealth Government, six states\(^1\) and ten territories\(^2\) was established through the adoption of the Australian Constitution in

\(^1\) New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia.

\(^2\) The Australian Capital Territory (ACT), Northern Territory (NT), Norfolk Island, Ashmore and Cartier Islands, Australian Antarctic Territory, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Jervis Bay Territory, and Territory of Heard Island and McDonald Islands. Territories are administered by the Commonwealth Government but he first three territories named above have been given limited rights to self govern. Outside of government, the ACT and the NT are often treated like states because of their significant population sizes.
1901. Each state also adopted its own constitution. The Australian Constitution specifies how lawmaking powers are to be shared between the Commonwealth and states. Most of the powers relevant to IS issues are contained in S51 of the Australian Constitution including those relevant to IS issues: quarantine (section 51(ix)); census and statistics (section 51 (xi)); and external affairs (section 51(xxix)). The Australian Constitution (under S109) specifies that in situations of conflict between state and Commonwealth laws, state law gives way to the extent of the inconsistency {Riley, 2011 #13}.

Traditionally, most IS issues have been dealt with at the state and territory level. The Australian Constitution does not give explicit power to the Commonwealth in environmental matters. The Commonwealth’s relevant powers were regulating border and pre-border activities such as quarantine screening and inspection of vessels, goods and passengers arriving at Australian points of entry {Johnson, 2010 #7}. This situation changed in 1983 when the High Court held that the external affairs power in section 51(xxix) of the Constitution ‘authorizes a law which gives effect to an obligation imposed on Australia by a bona fide international convention or treaty to which Australia is a party’{Riley, 2011 #13}.

This ruling has had a significant impact on Commonwealth and state decisions especially in light of the increasing numbers of international treaties and conventions to which Australia has become party.

The Commonwealth powers to legislate for the control of IS is complicated by the existence of established legislation and institutional arrangements within states and territories. Taking these factors into consideration, the Commonwealth has chosen to use its environmental powers to influence state action through a regime of ‘cooperative federalism’; ‘...the process by which the Commonwealth and the States organise for their overlapping constitutional powers to be exercised concurrently in order to achieve national outcomes through consensual processes.’{Riley, 2011 #13}.

Under the philosophy of cooperative federalism, the Commonwealth and state governments established the Council of Australian Governments (COAG) in 1992. This is a forum comprising the premiers of each of the states, the chief ministers of the ACT and the Northern Territory, the President of the Australian Local Government Association and the Prime Minister, at which policies of national significance are discussed. The aim of COAG is to achieve a balance between the needs of all levels of government to achieve reforms of national significant through a consultative process. Several associated institutional arrangements, including Commonwealth-State Ministerial Councils (Ministerial Councils), Intergovernmental Agreements and national strategies and specialist sub-committees aid COAG in its work {Riley, 2011 #13}. These facilitative institutions play a significant role in Australia’s management.

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Mason J, parag 5 (last visited December 2010).

Ministerial Councils develop policy reforms for consideration by COAG and also oversee the implementation of those reforms. Ministerial Councils are comprised of state and federal ministers. Currently there are over 40 Ministerial Councils overseeing a range of issues from International Trade to Local Government and Environmental Protection. Intergovernmental Agreements are negotiated amongst Federal, State and Territory governments and represent a political commitment on the part of each government to implement COAG decisions. There are numerous Inter-governmental Agreements covering matters such as food regulation, control of foot and mouth disease and regulation of the environment. With respect to the latter, two important agreements are the 1992 Intergovernmental Agreement on the Environment (the IGAE) and the 1997 Heads of Government Agreement on Commonwealth/State Roles and Responsibilities for the Environment.

Annex 2: Glossary

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>ALOP</td>
<td>Appropriate level of sanitary and phytosanitary protection</td>
</tr>
<tr>
<td>AQIS</td>
<td>Australian Quarantine and Inspection Service</td>
</tr>
<tr>
<td>AQUAVETPLAN</td>
<td>Australian Aquatic Veterinary Emergency Plan</td>
</tr>
<tr>
<td>APB</td>
<td>Agricultural Protection Board</td>
</tr>
<tr>
<td>AUSVETPLAN</td>
<td>Australian Veterinary Emergency Plan</td>
</tr>
<tr>
<td>AWC</td>
<td>Australian Weeds Committee</td>
</tr>
<tr>
<td>BA</td>
<td>Biosecurity Australia</td>
</tr>
<tr>
<td>CAMBA</td>
<td>China-Australia Migratory Bird Agreement</td>
</tr>
<tr>
<td>CCIMPE</td>
<td>Consultative Committee on Introduced Marine Pest Emergencies</td>
</tr>
<tr>
<td>CITES</td>
<td>Convention on International Trade in Endangered Species of Wild Fauna and Flora</td>
</tr>
<tr>
<td>CRC</td>
<td>Cooperative Research Centre</td>
</tr>
<tr>
<td>CSIRO</td>
<td>Commonwealth Scientific and Industrial Research Organisation</td>
</tr>
<tr>
<td>DAFF</td>
<td>Australian Government Department of Agriculture, Fisheries and Forestry</td>
</tr>
<tr>
<td>CSIRO</td>
<td>Commonwealth Scientific and Industrial Research Organisation</td>
</tr>
<tr>
<td>DEWHA</td>
<td>Department of Water Heritage and the Arts</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------------------------------------</td>
</tr>
<tr>
<td>EADRA</td>
<td>Emergency Animal Disease Response Agreement</td>
</tr>
<tr>
<td>EMPPLAN</td>
<td>Australian Emergency Marine Pest Plan</td>
</tr>
<tr>
<td>EPBC Act</td>
<td>Environment Protection and Biodiversity Conservation Act 1999</td>
</tr>
<tr>
<td>ECITA</td>
<td>Environment, Communications, Information Technology and the Arts</td>
</tr>
<tr>
<td>EPPRD</td>
<td>Emergency Plant Pest Response Deed</td>
</tr>
<tr>
<td>GMI</td>
<td>Grow Me Instead</td>
</tr>
<tr>
<td>IPPC</td>
<td>International Plant Protection Convention</td>
</tr>
<tr>
<td>IRA</td>
<td>Import Risk Analysis</td>
</tr>
<tr>
<td>IRAAP</td>
<td>Import Risk Analysis Appeals Panel</td>
</tr>
<tr>
<td>JAMBA</td>
<td>Japan-Australia Migratory Bird Agreement</td>
</tr>
<tr>
<td>KTP</td>
<td>Key Threatening Process</td>
</tr>
<tr>
<td>NGIA</td>
<td>Nursery &amp; Garden Industry Australia</td>
</tr>
<tr>
<td>NIMPCG</td>
<td>National Introduced Marine Pest Coordination Group</td>
</tr>
<tr>
<td>NPWS</td>
<td>National Parks and Wildlife Service</td>
</tr>
<tr>
<td>NRMA</td>
<td>Natural Resource Management Authorities (NRMA)</td>
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<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>OIE</td>
<td>World Organisation for Animal Health</td>
</tr>
<tr>
<td>OCPPO</td>
<td>Office of the Chief Plant Protection Officer</td>
</tr>
<tr>
<td>OCVO</td>
<td>Office of the Chief Veterinary Officer</td>
</tr>
<tr>
<td>PRA</td>
<td>Pest Risk Assessment</td>
</tr>
<tr>
<td>QAP</td>
<td>Quarantine Approved Premises</td>
</tr>
<tr>
<td>ROKAMBA</td>
<td>Republic of Korea – Australia Migratory Bird Agreement</td>
</tr>
<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary Measures</td>
</tr>
<tr>
<td>TAP</td>
<td>Threat Abatement Plan</td>
</tr>
<tr>
<td>VIC</td>
<td>Victoria</td>
</tr>
<tr>
<td>VPC</td>
<td>Vertebrate Pests Committee</td>
</tr>
<tr>
<td>WA</td>
<td>Western Australia</td>
</tr>
<tr>
<td>WONS</td>
<td>Weeds of National Significance</td>
</tr>
<tr>
<td>WRA</td>
<td>Weed Risk Assessment</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
</tbody>
</table>
Annex 3: Biosecurity Australia (plant division)

The national plant protection organisation (NPPO) in Australia is provided by the Plant Division located within the Biosecurity Services Group of the Australian government Department of Agriculture, Fisheries and Forestry (DAFF). Within that Division:

- Plant Biosecurity (Horticulture) and Plant Biosecurity (Grains and Forestry) provide science-based quarantine assessments and policy advice to support Australia’s plant-based agricultural exports and protect Australia from plant-based biosecurity risks to amenity, rural industry productivity and export.

- Office of the Chief Plant Protection Officer helps to protect Australia from the impact of incursions of exotic plant pests (including insect pests, diseases and weeds) that may impact on Australia’s plant industries, to ensure the safe domestic and international trade of plant products.

- Plant Quarantine Operations is responsible for regulating imported products to Australia’s appropriate level of protection.

- Plant Export Operations regulates the export of plants, seed and grain by the delivery of export inspection and certification services.

Annex 4: Australian instruments

Australian laws, regulations, policies and strategies, and international conventions to which Australia is a party relevant to the management of invasive species (this is not an exhaustive list but indicates the breadth and complexity of instruments used in Australia)

<table>
<thead>
<tr>
<th>Authority</th>
<th>Responsibility</th>
<th>Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth Department of Environment and Heritage (DEH)</td>
<td>Managing invasive species threatening environmental values (mostly involved in controlling established invasive species.)</td>
<td>Environment Protection and Biodiversity Conservation (EPBC) Act (1999)</td>
</tr>
</tbody>
</table>
| - Australian Weeds Committee  
- Vertebrate Pests Committee | Under the auspices of the Natural Resource Management Ministerial Committee, it sets the direction for weed/vertebrate pest management in Australia and reports through National Biosecurity Council |  
- National Weed Strategy  
- Australian Pest Animal Strategy |
| Commonwealth Department of Forestry and Fisheries (DAFF) | Manage invasive species posing a threat to production values (mostly responding to |  
- Quarantine Act 1908  
  - Import risk analysis  
  - Weed risk analysis  
  - Northern Australian |
<table>
<thead>
<tr>
<th><strong>AUSTRALIA</strong></th>
<th><strong>QUARANTINE STRATEGY</strong></th>
</tr>
</thead>
</table>
| • Australian Quarantine and Inspection Service (AQIS)  
• Biosecurity Australia | • newly identified invasive species  
• International agreements  
• Pre-border and border monitoring, detections and control arrangements  
• National policies and programs to manage early pest incursions |
| **Natural Heritage Trust** | **Quarantine Strategy** |
| Jointly administered by DEH and DAFF, the Trust provides funding for programs and project for natural resource management | • PLANTPLAN (through Plant Health)  
• AQUAVETPLAN  
• MPPlan  
• AUSVETPLAN (through Animal Health) |
| **International and Regional Agreements** | **Natural Heritage Trust of Australia Act 1997** |
| • World Trade Organisation  
• Convention on Biodiversity and Cartagena protocol  
• Convention on International Trade in Endangered Species of Wild Fauna and Flora  
• Ramsar, JAMBA, CAMBA, ROKAMBA, Bonn Convention  
• *International Convention for the Control and Management of Ships’ Ballast Water and Sediments*  
• *International Plant Protection Convention and Asia and Pacific Plant Protection Commission*  
• World Organisation for Animal Health | • Effects how Australia can set it ALOP of imports.  
• A factor in establishing national and state strategies on biodiversity[DSEWPC, #82] and consideration of GMO.  
• The legislative basis for implementation of CITES is under Part 13A of the EPBC Act.  
• Protection of migratory species, also provided for in the EPBC Act.  
• Guides the implementation of the framework for the regulation of ballast water disposal in Australian waters.  
• Strategies in place adhere to and, often, go beyond the requirements of these conventions |
| **NSW Livestock Health and Pest Authority** | **Quarantine Strategy** |
| • Provides the processes and mechanisms for the control of declared pest species  
• Imposes legal obligations on owners | • Rural Lands Protection Act 1998  
• Rural lands Protection Amendment Act 2003 |
and occupiers of land to eradicate pest animals

| NSW Department of Environment, Climate Change and Water | Provides the legislative basis for control of vertebrate pests in NSW  
• Lists key threatening processes and prescribes development and implementation of threat abatement plans | National Parks and Wildlife Act 1974  
• Threatened Species Conservation Act 1995 |
| NSW Industry and Investment  
• Noxious Weeds Advisory Committee (NWAC) | Lead agency for management and implementation of the Invasive Species Plan in NSW | Noxious Weeds Act 1993 (NSW)  
• NSW Biosecurity Strategy  
• NSW Invasive Species Plan |
| Department of Primary Industries (DPI) Vic.  
• Victorian Catchment Management Council  
• Regional Catchment Management Authorities (CMAs) | Implementation of a whole-of-community' approach to invasive species in Victoria, ensuring legislation is consistent and complimentary.  
• Responsible for the control of noxious weeds and pest animals in Victoria. | Biological Control Act 1986 (Vic)  
• Invasive Plants and Animals Policy Framework  
• Plant Health and Plant Products Act 1995 (Vic)  
• Control of Genetically Modified Crops Act 2004 (Vic)  
• Fisheries Act 1995 (Vic)  
• Livestock disease Control Act 1994 (Vic)  
• Catchment and Land Protection (CaLP) Act 1994 (Vic) |
| Department of Sustainability and Environment (Victoria) | Manages potentially threatening process to the conservation of threatened indigenous species – including from invasive species | Flora and Fauna Guarantee Act 1988 |
| Primary industries and fisheries (Queensland)  
• Biosecurity Queensland | Actions with respect to control and management of declared plants and animals in Queensland. | Land Protection (Pest and Stock Route Management) Act 2002 (Qld)  
• The Land Protection (Pest and Stock Route Management) Regulation 2003 (Qld)  
• Queensland Weeds Strategy 2002-2006  
• Pest Animal Strategy |
<table>
<thead>
<tr>
<th>AUSTRALIA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Department of Agriculture and Food (Western Australia)</strong></td>
</tr>
<tr>
<td>Responsible for preventing new animal and plant pests and diseases from entering Western Australia, and limit the impact and spread of those already in Western Australia.</td>
</tr>
<tr>
<td><strong>Department of Primary Industries, Parks, Water and Environment</strong></td>
</tr>
<tr>
<td>Responsible for preventing new animal and plant pests and diseases from entering Tasmania and managing those already in Tasmania</td>
</tr>
<tr>
<td><strong>Primary Industries and Resources SA</strong></td>
</tr>
<tr>
<td>• Biosecurity SA</td>
</tr>
<tr>
<td>• Regional Natural Resources management Boards</td>
</tr>
<tr>
<td><strong>Parks Conservation and Lands</strong></td>
</tr>
<tr>
<td><strong>Australian Capital Territory</strong></td>
</tr>
<tr>
<td>• If the impact of pest plants and animals is considered to be a threatening process, a strategy is prepared for its control.</td>
</tr>
<tr>
<td>• Allows for the declaration of noxious fish.</td>
</tr>
<tr>
<td><strong>Northern Territory (NT) Department of Natural Resources, Environment and The Arts</strong></td>
</tr>
<tr>
<td>• Provides for the prevention of spread of weeds into and out of the NT</td>
</tr>
<tr>
<td>• Control of Prescribed feral animals</td>
</tr>
</tbody>
</table>
Annex 5: Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

(The following text is quoted from Beale (2008) [Beale, 2008 #8]

2.20 The EPBC Act is the principal piece of Commonwealth legislation in relation to environmental protection and biodiversity conservation. It came into effect on 16 July 2000 and upon its commencement, it replaced a number of Commonwealth statutes which had dealt with aspects of environmental protection and biodiversity conservation but in a less holistic and integrated manner.

2.21 The key purpose of the EPBC Act was to clarify the matter of Commonwealth environmental jurisdiction. The IPBC Act focuses on ‘matters of national environmental significance’ and seeks to promote the conservation of biodiversity by providing protection for:

- Listed species and communities in Commonwealth areas (this includes listed threatened species and ecological communities, listed migratory species and listed marine species);
- Cetaceans (all whales, dolphins and porpoises) in Commonwealth waters and outside Australian waters;
- Protected species in the Territories of Christmas Island, Cocos (Keeling) Islands and Coral Sea Islands; and
- Protected areas (World Heritage properties; Ramsar wetlands; Biosphere reserves; Commonwealth reserves; and conservation zones); and
- Wildlife species and wildlife products subject to international trade.

2.22 The EPBC Act provides for:

- The identification of key threatening processes;
- The protection of critical habitat;
- The preparation of recovery plans; threat abatement plans; wildlife conservation plans; bioregional plans; and conservation agreements;
- The issuing of conservation orders; and
- The regulation of exports and imports of live animals and plants, wildlife specimens, and products made or derived from wildlife.

2.23 The EPBC Act provides a framework for the management of invasive species by providing for the listing of key threatening processes and the creation of national threat abatement plans (TAPs). Under the EPBC Act there is the provision for threat abatement plans to be made jointly with the states and territories or with agencies of those states and territories. Plans are developed in consultation with stakeholders and draft plans are circulated for public consultation for a three month period...

2.24 Section 301A of the IPBC Act also provides for the development of regulations for the control of non-native species. Under the EPBC Act regulations may provide for the establishment and maintenance of a list of species, other than native species, who members threaten or would likely threaten biodiversity. Regulations may also regulate or prohibit...
trade in members of a species between Australia and other countries, between states and territories, and by constitutional corporations... this part of the Act has not been implemented (Italics added).

2.25 The EPBC Act also establishes a process for the assessment of proposed actions by either private persons, corporations or government and its agencies, that have, will have or are likely to have a significant impact on matters of national environmental signification. These matters are set out in Part 3 of the EPBC Act and include:

- World heritage properties;
- Wetlands of national importance (i.e. declared Ramsar wetlands);
- Listed threatened species and communities
- Listed migratory species;
- Nuclear actions;
- Commonwealth marine areas; and
- Any further matter prescribed by regulation.

2.26 ...The EPBC Act established a list of specimens suitable for live import (the live import list) and prohibits the import of any species not on this list. The legislation provides for the possibility of a live import being permitted under exceptional circumstances where the Minister is satisfied there is no risk to the environment. The live import list is divided into two parts – Part 1 is a list of specimens that may be imported without a permit and Part 2 is a list of specimens that may only be imported with a permit, often with conditions attached. It is an offence to import a specimen that does not appear on the list, or a specimen on Part 2 without a permit.

An applicant wishing to add a species to this live import list must prepare an assessment report examining the potential impacts on the environment of the proposed import. The draft terms of reference for the report and the draft report are published on the Department’s website for public comment, and an email to registered stakeholders is sent out inviting comment on both documents, and a letter is sent to the appropriate state, territory and Australian government ministers request comment on the draft report. A species will be added to the live import list only when the minister is satisfied that it will not impact on the Australian environment...

Currently there are 62 applications which are being progressed by the applicant (e.g. development of the assessment report, collating further information relating to their application, etc.), 36 applications are being progressed by the Department, 11 have been completed, 2 withdrawn and 1 internal amendment to the list relating to the listing of plants has also been completed.
1.2. CANADA

The Canada National Parks Act

Management by Minister

8. (1) The Minister is responsible for the administration, management and control of parks, including the administration of public lands in parks and, for that purpose, the Minister may use and occupy those lands.

Ecological integrity

(2) Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.

16. (1) The Governor in Council may make regulations respecting

(a) the preservation, control and management of parks;

(b) the protection of flora, soil, waters, fossils, natural features, air quality, and cultural, historical and archaeological resources;

(c) the protection of fauna, the taking of specimens of fauna for scientific or propagation purposes, and the destruction or removal of dangerous or superabundant fauna;

Trafficking in wild animals, etc.

25. (1) Except as permitted by this Act or the regulations, no person shall traffic in any wild animal, whether living or dead, at any developmental stage, in any part of or any derivative of, or in any egg or embryo of, a wild animal — or in any plant or part of a plant or in any other naturally occurring object or product of natural phenomena — taken in or from a park.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than $7,500 and not more than $500,000 or to imprisonment for a term of not more than one year, or to both, and

(B) for a second or subsequent offence, to a fine of not less than $15,000 and not more than $1,000,000 or to imprisonment for a term of not more than one year, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than $400,000 and not more than $5,000,000, and

(B) for a second or subsequent offence, to a fine of not less than $800,000 and not more than $10,000,000, and
(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,

(A) for a first offence, to a fine of not less than $25,000 and not more than $3,000,000, and

(B) for a second or subsequent offence, to a fine of not less than $50,000 and not more than $6,000,000; or

(b) on summary conviction,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than $4,000 and not more than $225,000 or to imprisonment for a term of not more than six months, or to both, and

(B) for a second or subsequent offence, to a fine of not less than $8,000 and not more than $450,000 or to imprisonment for a term of not more than six months, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than $50,000 and not more than $3,000,000, and

(B) for a second or subsequent offence, to a fine of not less than $100,000 and not more than $6,000,000, and

(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,

(A) for a first offence, to a fine of not less than $15,000 and not more than $1,250,000, and

(B) for a second or subsequent offence, to a fine of not less than $30,000 and not more than $2,500,000.

Definition of “traffic”

(3) In this section and section 26, “traffic” means to sell, offer for sale, expose for sale, buy, offer to buy, solicit, barter, exchange, give, send, transport or deliver.

Hunting, trafficking or possessing

26. (1) Except as permitted by this Act or the regulations, no person shall

(a) hunt, in a park, any wild animal of a species named in Part 1 of Schedule 3;

(b) traffic in or possess, in a park, any wild animal of a species named in Part 1 of Schedule 3, whether living or dead, at any developmental stage, or any egg or embryo, or any part or derivative, of any such animal; or

(c) traffic in or possess any wild animal of a species named in Part 1 of Schedule 3, whether living or dead, at any developmental stage, taken from a park, or any egg or embryo, or any part or derivative, of any such animal that was taken from a park.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and liable
(a) on conviction on indictment,
(i) in the case of an individual,
(A) for a first offence, to a fine of not less than $15,000 and not more than $1,000,000 or to imprisonment for a term of not more than five years, or to both, and
(B) for a second or subsequent offence, to a fine of not less than $30,000 and not more than $2,000,000 or to imprisonment for a term of not more than five years, or to both,
(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (i),
(A) for a first offence, to a fine of not less than $500,000 and not more than $6,000,000, and
(B) for a second or subsequent offence, to a fine of not less than $1,000,000 and not more than $12,000,000,
(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
(A) for a first offence, to a fine of not less than $75,000 and not more than $4,000,000, and
(B) for a second or subsequent offence, to a fine of not less than $150,000 and not more than $8,000,000; or
(b) on summary conviction,
(i) in the case of an individual,
(A) for a first offence, to a fine of not less than $5,000 and not more than $300,000 or to imprisonment for a term of not more than six months, or to both, and
(B) for a second or subsequent offence, to a fine of not less than $10,000 and not more than $600,000 or to imprisonment for a term of not more than six months, or to both,
(iii) in the case of a person, other than an individual or a corporation referred to in subparagraph (i),
(A) for a first offence, to a fine of not less than $100,000 and not more than $4,000,000, and
(B) for a second or subsequent offence, to a fine of not less than $200,000 and not more than $8,000,000,
(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
(A) for a first offence, to a fine of not less than $25,000 and not more than $2,000,000, and
(B) for a second or subsequent offence, to a fine of not less than $50,000 and not more than $4,000,000.
Hunting, trafficking or possessing

(3) Except as permitted by this Act or the regulations, no person shall
(a) hunt, in a park, any wild animal of a species named in Part 2 of Schedule 3;
(b) traffic in or possess, in a park, any wild animal of a species named in Part 2 of Schedule 3, whether living or dead, at any developmental stage, or any egg or embryo, or any part or derivative, of any such animal; or

(c) traffic in or possess any wild animal of a species named in Part 2 of Schedule 3, whether living or dead, at any developmental stage, taken from a park, or any egg or embryo, or any part or derivative, of any such animal that was taken from a park.

Offence

(4) Every person who contravenes subsection (3) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than $10,000 and not more than $750,000 or to imprisonment for a term of not more than five years, or to both, and

(B) for a second or subsequent offence, to a fine of not less than $20,000 and not more than $1,500,000 or to imprisonment for a term of not more than five years, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than $450,000 and not more than $5,500,000, and

(B) for a second or subsequent offence, to a fine of not less than $900,000 and not more than $11,000,000, and

(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,

(A) for a first offence, to a fine of not less than $50,000 and not more than $3,500,000, and

(B) for a second or subsequent offence, to a fine of not less than $100,000 and not more than $7,000,000; or

(b) on summary conviction,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than $4,500 and not more than $250,000 or to imprisonment for a term of not more than six months, or to both, and

(B) for a second or subsequent offence, to a fine of not less than $9,000 and not more than $500,000 or to imprisonment for a term of not more than six months, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than $75,000 and not more than $3,500,000, and

(B) for a second or subsequent offence, to a fine of not less than $150,000 and not more than $7,000,000, and
(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,

(A) for a first offence, to a fine of not less than $20,000 and not more than $1,500,000, and

(B) for a second or subsequent offence, to a fine of not less than $40,000 and not more than $3,000,000.

Pollution clean-up

32. (1) Where a substance that is capable of degrading the natural environment, injuring fauna, flora or cultural resources or endangering human health is discharged or deposited in a park, any person who has charge, management or control of the substance shall take reasonable measures to prevent any degradation of the natural environment and any danger to the fauna, flora or cultural resources or to persons that may result from the discharge or deposit.

- Canada Shipping Act 2001

Regulations

190. (1) The Governor in Council may, on the recommendation of the Minister, make regulations respecting the protection of the marine environment, including regulations

(a) prescribing pollutants for the purpose of sections 187 and 189 and respecting the circumstances in which such pollutants may be discharged;

(b) respecting the circumstances in which persons on board vessels shall report discharges or anticipated discharges, the manner of making the reports and the persons to whom the reports shall be made;

(c) respecting the carrying of pollutants on board a vessel, whether as cargo or fuel;

(d) respecting the control and prevention of pollution of the air by vessels;

(e) respecting reception facilities for oily residues, chemical residues, garbage and sewage;

(f) respecting the control and management of ballast water;

(g) for preventing or reducing the release by vessels into waters of aquatic organisms or pathogens that, if released into those waters, could create hazards to human health, harm organisms, damage amenities, impair biological diversity or interfere with legitimate uses of the waters;

191. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

(a) section 187 (discharge of a pollutant);

(b) section 188 (implement shipboard oil pollution emergency plan);

(c) a direction given under subparagraph 189(d)(i) (proceed to a place and unload a pollutant); and

(d) a provision of the regulations made under this Part.
Punishment

(2) Every person or vessel that commits an offence under subsection (1) is liable on summary conviction to a fine of not more than $1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

- **Canada Wildlife Act 1985**

3. The Minister may

(a) undertake, promote and recommend measures for the encouragement of public cooperation in wildlife conservation and interpretation;

(b) initiate conferences and meetings respecting wildlife research, conservation and interpretation;

(c) undertake programs for wildlife research and investigation, and establish and maintain laboratories and other necessary facilities for that purpose;

(d) establish such advisory committees as the Minister deems necessary and appoint the members of those committees; and

(e) coordinate and implement wildlife policies and programs in cooperation with the government of any province having an interest therein.

Measures for protection

8. The Minister may, in cooperation with one or more provincial governments having an interest therein, take such measures as the Minister deems necessary for the protection of any species of wildlife in danger of extinction.

- **Canadian Environmental Protection Act**

Notice requiring information

46. (1) The Minister may, for the purpose of conducting research, creating an inventory of data, formulating objectives and codes of practice, issuing guidelines or assessing or reporting on the state of the environment, publish in the *Canada Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person described in the notice to provide the Minister with any information that may be in the possession of that person or to which the person may reasonably be expected to have access, including information regarding the following:

(i) substances that, if released into areas of Canada where there are migratory birds, endangered species or other wildlife regulated under any other Act of Parliament, are harmful or capable of causing harm to those birds, species or wildlife;

114. (1) The Governor in Council may, on the recommendation of the Ministers, make regulations

(a) respecting living organisms or establishing groups of living organisms for the purposes of the provision of information under section 106 or 107, including those that are exotic or
indigenous, research and development living organisms and living organisms manufactured only for export, and designating ecozones or groups of ecozones;

- **Canadian Environmental Assessment Act**

2. (1) “environmental effect” means, in respect of a project,

(a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the **Species at Risk Act**.

**Species at Risk Act**

11.01 (3) When, in relation to a project, the Agency exercises the powers and performs the duties and functions of the responsible authority under subsection (1), it is also required to exercise the powers and perform the duties and functions of the responsible authority under subsection 79(1) of the **Species at Risk Act** and, with respect to identifying the adverse effects of the project on a listed wildlife species and its critical habitat, is required to exercise the powers and perform the duties and functions of the responsible authority under subsection 79(2) of that Act.

- **Department of Natural Resources Act**

General duties

6. In exercising the powers and performing the duties and functions assigned to the Minister by section 5, the Minister shall

(a) have regard to the sustainable development of Canada’s natural resources and the integrated management thereof;

(b) coordinate, promote, recommend and implement policies with respect to the matters referred to in that section, and programs and practices established pursuant to those policies;

(c) assist in the development and promotion of Canadian scientific and technological capabilities;

(d) participate in the development and application of codes and standards for technical surveys and natural resources products and for the management and use of natural resources;

(e) seek to enhance the responsible development and use of Canada’s natural resources and the competitiveness of Canada’s natural resources products;

(f) participate in the enhancement and promotion of market access for Canada’s natural resources products and technical surveys industries, both domestically and internationally;

(g) promote the development and use of remote sensing technology;

(h) promote cooperation with the governments of the provinces and with non-governmental organizations in Canada, and participate in the promotion of cooperation with the governments of other countries and with international organizations; and
(i) gather, compile, analyse, coordinate and disseminate information respecting scientific, technological, economic, industrial, managerial, marketing and related activities and developments affecting Canada’s natural resources.

**Fisheries Act**

30. (1) Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting so fixed as to prevent the passage of fish from any Canadian fisheries waters into the water intake, ditch, channel or canal.

35. (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

37. (1) Where a person carries on or proposes to carry on any work or undertaking that results or is likely to result in the alteration, disruption or destruction of fish habitat, or in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such waters, the person shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph (3)(a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

(a) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under subsection 40(1) and what measures, if any, would prevent that result or mitigate the effects thereof; or

(b) whether there is or is likely to be a deposit of a deleterious substance by reason of the work or undertaking that constitutes or would constitute an offence under subsection 40(2) and what measures, if any, would prevent that deposit or mitigate the effects thereof.

**Offence and punishment**

40. (1) Every person who contravenes subsection 35(1) is guilty of

(a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.
43. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

(a) for the proper management and control of the sea-coast and inland fisheries;
(b) respecting the conservation and protection of fish;
(c) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;
(i) respecting the conservation and protection of spawning grounds;
(j) respecting the export of fish or any part thereof from Canada;
(k) respecting the taking or carrying of fish or any part thereof from one province to any other province;

Forestry Act

3. (1) In exercising the powers and performing the duties and functions assigned to the Minister by the Department of Natural Resources Act, the Minister

(a) shall provide for the conduct of research relating to the protection, management and utilization of the forest resources of Canada and the better utilization of forest products and may establish and maintain laboratories and other necessary facilities for those purposes;
(b) may undertake, promote or recommend measures for the encouragement of public cooperation in the protection and wise use of the forest resources of Canada;
(c) may enter into agreements with the government of any province or with any person for forest protection and management or forest utilization, for the conduct of research related thereto or for forestry publicity or education;
(d) may provide for the making of forestry surveys and provide advice relating to the protection and management of forests on lands administered by any department or agency of the Government of Canada or belonging to Her Majesty in right of Canada; and
(e) at the request of any department or agency of the Government of Canada, may assume responsibility for the protection and management of any forest on lands for which that department or agency is responsible, including responsibility for the disposal of timber and grass and for the granting of rights to the natural produce of the forest

6. The Governor in Council may make regulations for the protection, care and management of lands comprised in Forest Experimental Areas and lands in respect of which the Minister has assumed responsibility under paragraph 3(1)(e), including regulations respecting

(a) the cutting, removal and disposal of timber, the establishment and use of reservoirs, water power sites, power transmission lines and communication lines and any other use of those lands, and the granting of leases and permits therefor;
(b) the protection of the flora and fauna;
(c) the prevention and extinguishing of fires;
Every person who contravenes any regulation made under section 6 is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both.

The Oceans Act

30. The national strategy will be based on the principles of

(a) sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

(b) the integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and

(c) the precautionary approach, that is, erring on the side of caution

32. For the purpose of the implementation of integrated management plans, the Minister

(a) shall develop and implement policies and programs with respect to matters assigned by law to the Minister;

(b) shall coordinate with other ministers, boards and agencies of the Government of Canada the implementation of policies and programs of the Government with respect to all activities or measures in or affecting coastal waters and marine waters;

(c) may, on his or her own or jointly with another person or body or with another minister, board or agency of the Government of Canada, and taking into consideration the views of other ministers, boards and agencies of the Government of Canada, provincial and territorial governments and affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements,

(i) establish advisory or management bodies and appoint or designate, as appropriate, members of those bodies, and

(ii) recognize established advisory or management bodies; and

(d) may, in consultation with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, establish marine environmental quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters.

35. (1) A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section for special protection for one or more of the following reasons:

(a) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;
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(b) the conservation and protection of endangered or threatened marine species, and their habitats;

(c) the conservation and protection of unique habitats;

(d) the conservation and protection of marine areas of high biodiversity or biological productivity; and

(e) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.

(3) The Governor in Council, on the recommendation of the Minister, may make regulations

(a) designating marine protected areas; and

(b) prescribing measures that may include but not be limited to

(i) the zoning of marine protected areas,

(ii) the prohibition of classes of activities within marine protected areas, and

(iii) any other matter consistent with the purpose of the designation.

37. Every person who contravenes a regulation made under paragraph 35(3)(b) or an order made under subsection 36(1) in the exercise of a power under that paragraph

(a) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding $100,000; or

(b) is guilty of an indictable offence and liable to a fine not exceeding $500,000.

42. In exercising the powers and performing the duties and functions assigned by paragraph 4(1)(c) of the Department of Fisheries and Oceans Act, the Minister may

(a) collect data for the purpose of understanding oceans and their living resources and ecosystems;

(b) conduct hydrographic and oceanographic surveys of Canadian and other waters;

(c) conduct marine scientific surveys relating to fisheries resources and their supporting habitat and ecosystems;

(d) conduct basic and applied research related to hydrography, oceanography and other marine sciences, including the study of fish and their supporting habitat and ecosystems;

(e) carry out investigations for the purpose of understanding oceans and their living resources and ecosystems;

(f) prepare and publish data, reports, statistics, charts, maps, plans, sections and other documents;

(g) authorize the distribution or sale of data, reports, statistics, charts, maps, plans, sections and other documents;

(h) prepare in collaboration with the Minister of Foreign Affairs, publish and authorize the distribution or sale of charts delineating, consistently with the nature and scale of the
charts, all or part of the territorial sea of Canada, the contiguous zone of Canada, the exclusive economic zone of Canada and the fishing zones of Canada and adjacent waters;

(i) participate in ocean technology development; and

(j) conduct studies to obtain traditional ecological knowledge for the purpose of understanding oceans and their living resources and ecosystems.

52.1 The Governor in Council may, on the recommendation of the Minister, make regulations for carrying out the purposes and provisions of this Act and, in particular, but without restricting the generality of the foregoing, may make regulations

(a) prescribing marine environmental quality requirements and standards;

(b) respecting the powers and duties of persons designated by the Minister as enforcement officers; and

(c) respecting the implementation of provisions of agreements made under this Act.

Pest Control Products Act

“pest control product” means

(a) a product, an organism or a substance, including a product, an organism or a substance derived through biotechnology, that consists of its active ingredient, formulates and contaminants, and that is manufactured, represented, distributed or used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects;

(b) an active ingredient that is used to manufacture anything described in paragraph (a); or

(c) any other thing that is prescribed to be a pest control product.

Primary objective

4. (1) In the administration of this Act, the Minister’s primary objective is to prevent unacceptable risks to people and the environment from the use of pest control products.

Ancillary objectives

(2) Consistent with, and in furtherance of, the primary objective, the Minister shall

(a) support sustainable development designed to enable the needs of the present to be met without compromising the ability of future generations to meet their own needs;

(b) seek to minimize health and environmental risks posed by pest control products and encourage the development and implementation of innovative, sustainable pest management strategies by facilitating access to pest control products that pose lower risks and by other appropriate measures;

(c) encourage public awareness in relation to pest control products by informing the public, facilitating public access to relevant information and public participation in the decision-making process; and
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(d) ensure that only those pest control products that are determined to be of acceptable value are approved for use in Canada.

PROHIBITIONS

Unregistered pest control products

6. (1) No person shall manufacture, possess, handle, store, transport, import, distribute or use a pest control product that is not registered under this Act, except as otherwise authorized under subsection 21(5) or 41(1), any of sections 53 to 59 or the regulations.

Conditions of registration

(2) No person shall manufacture, import, export or distribute a registered pest control product unless it conforms to the conditions of registration respecting its composition and the person complies with the other conditions of registration.

Packaging of pest control products

(3) No person shall store, import, export or distribute a pest control product that is not packaged in accordance with the regulations and the conditions of registration.

Defence

(4) A person shall not be found to have contravened subsection (3) if it is established that the person reasonably believed that the pest control product was packaged in accordance with the regulations and the conditions of registration.

Misuse of pest control products

(5) No person shall handle, store, transport, use or dispose of a pest control product in a way that is inconsistent with

(a) the regulations; or

(b) if the product is registered, the directions on the label recorded in the Register, subject to the regulations.

Offence and punishment

(9) A person who contravenes any provision of this section is guilty of an offence and liable

(a) on summary conviction, to a fine of not more than $200,000 or to imprisonment for a term of not more than six months, or to both; or

(b) on conviction on indictment, to a fine of not more than $500,000 or to imprisonment for a term of not more than three years, or to both.

Application to Minister

7. (1) An application to register a pest control product or to amend the product’s registration must be made to the Minister in the form and manner directed by the Minister and must include any information or other thing that is required by the regulations to accompany the application.
19. (2) In evaluating the health and environmental risks of a pest control product and in determining whether those risks are acceptable, the Minister shall

(a) apply a scientifically based approach; and

(b) in relation to health risks,

(i) among other relevant factors, consider available information on aggregate exposure to the pest control product, namely dietary exposure and exposure from other non-occupational sources, including drinking water and use in and around homes and schools, and cumulative effects of the pest control product and other pest control products that have a common mechanism of toxicity,

(ii) apply appropriate margins of safety to take into account, among other relevant factors, the use of animal experimentation data and the different sensitivities to pest control products of major identifiable subgroups, including pregnant women, infants, children, women and seniors, and

(iii) in the case of a threshold effect, if the product is used in or around homes or schools, apply a margin of safety that is ten times greater than the margin of safety that would otherwise be applicable under subparagraph (ii) in respect of that threshold effect, to take into account potential pre- and post-natal toxicity and completeness of the data with respect to the exposure of, and toxicity to, infants and children, unless, on the basis of reliable scientific data, the Minister has determined that a different margin of safety would be appropriate.

Precautionary principle

20. (2) Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent adverse health impact or environmental degradation.

Export control list

33. (1) The Governor in Council may, by order, establish a Pest Control Products Export Control List consisting of pest control products that meet the prescribed criteria.

Prohibition

(2) No person shall export a pest control product that is on the Pest Control Products Export Control List, except as authorized under this Act.

Application

(3) An application for authorization to export a pest control product must be made to the Minister in the form and manner directed by the Minister.

Register

42. (1) The Minister shall establish and maintain a Register of Pest Control Products in accordance with the regulations, if any, that contains information about pest control products, including information about applications, registrations, re-evaluations and special reviews.
Powers of inspectors

48. (1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may

(a) subject to section 49, at any reasonable time, enter and inspect any place, or stop any means of transport, in which the inspector believes on reasonable grounds there is a pest control product or other thing to which this Act or the regulations apply;

(b) open and examine any receptacle, package or other thing that the inspector believes on reasonable grounds contains a pest control product or other thing to which this Act or the regulations apply and take samples from it;

(c) require any person to present any pest control product or other thing for inspection in any manner and under any conditions that the inspector considers necessary to conduct an inspection;

(d) require any person to produce for inspection or copying, in whole or in part, any record or other document that the inspector believes on reasonable grounds contains information relevant to the administration of this Act or the regulations; and

(e) conduct any tests or analyses or take any measurements.

Regulations — Governor in Council

67. (1) The Governor in Council may make regulations

(a) prescribing policies of the Government of Canada that are consistent with the objectives of this Act for the purposes of the definition “government policy” in section 2;

(b) prescribing the nomenclature of pests and pest control products for the purposes of this Act;

(c) respecting the information and other things that must accompany an application made under section 7 or 10;

(d) respecting standards of laboratory practice to be used in conducting tests to obtain information about pest control products, certification of compliance with those standards, inspection and audit of compliance and the consequences of a failure to comply;

(e) respecting the evaluation of the health or environmental risks or the value of pest control products;

68. (1) Every person is guilty of an offence if, in contravening this Act or the regulations, they cause

(a) a risk of imminent death or serious bodily harm to another person;

(b) a risk of substantial harm to the environment; or

(c) harm to the environment.

Punishment

(2) Every person who commits an offence under subsection (1) is liable
(a) on summary conviction, to a fine of not more than $200,000 or to imprisonment for a term of not more than six months, or to both; and

(b) on conviction on indictment, to a fine of not more than $500,000 or to imprisonment for a term of not more than three years, or to both.

### Seeds Act

Seed not conforming to standard, etc.

3. (1) Except as provided by the regulations, no person shall

(a) sell, import into Canada or export from Canada any seed unless the seed conforms to the prescribed standard and is marked and packed and the package labelled as prescribed; or

(b) sell or advertise for sale in Canada or import into Canada seed of a variety that is not registered in the prescribed manner.

4. (1) The Governor in Council may make regulations

(a) establishing grades with appropriate grade names for seeds;

(a.1) providing, with respect to grades requiring varietal purity, for the determination of varietal purity of seeds and, in particular, for any such determination to be made by the Canadian Seed Growers’ Association and any standards established by that Association to be used;

(b) prescribing the terms and conditions under which and the manner in which seed crops may be inspected or seeds may be graded or tested;

(c) prescribing the minimum standards of purity, germination, quality and disease for seeds;

(d) respecting the packing and marking of seeds and the marking and labelling of packages of seeds;

(e) prescribing the terms and conditions under which variety names of seeds may be used;

(f) exempting any seed or any person from the operation of all or any of the provisions of this Act;

(g) respecting the taking of samples and the testing of seeds for the purposes of this Act;

(h) respecting the fees that may be charged for any services provided under this Act;

(h.1) prescribing information that shall be given, and prohibiting or restricting the use of variety names, in labelling or advertising seeds for sale or making, in prescribed circumstances, offers of seeds for sale;

(h.2) respecting the registration of varieties of seeds and the amendment of the register of such varieties;

(h.3) specifying terms and conditions to which registration referred to in paragraph (h.2) shall be subject, including any limitation respecting the duration of any such registration or restricting any effect thereof to a region specified in the regulations;
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(h.4) prescribing the procedure for review of cases involving the refusal, suspension or cancellation of any registration referred to in paragraph (h.2);

(h.5) determining the cases in which and the conditions, including provision of a bond or suretyship, under which seeds shall, for the purposes of this Act, be transported and stored on importation;

(i) respecting the detention, preservation and safeguarding of anything seized under section 8;

(i.1) providing for any reasonable costs incidental to any seizure under this section, and to the detention of the thing seized, to be payable by and recoverable from the person entitled to possession thereof at the time of the seizure;

(j) respecting the disposition of anything forfeited under section 8;

(k) prescribing anything else that by this Act is required to be prescribed; and

(l) generally, for carrying out the purposes and provisions of this Act.

Powers of inspectors

6. (1) Subject to subsection (1.1), an inspector may at any reasonable time

(a) enter any place in which the inspector believes on reasonable grounds there is any seed to which this Act applies;

(b) open any package found in that place that the inspector believes on reasonable grounds contains any such seed;

(c) examine the seed and take samples thereof; and

(d) require any person to produce for inspection or for the purpose of obtaining copies or extracts any books, shipping bills, bills of lading or other documents or papers with respect to the administration of this Act or the regulations.

Contravention of Act or regulations

9. (1) Every person who, or whose employee or agent, contravenes any provision of this Act or any regulation made under paragraph 4(1)(e) or (h.1) is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding $50,000 or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable to a fine not exceeding $250,000 or to imprisonment for a term not exceeding two years, or to both.

- Transportation of Dangerous Goods Act

“dangerous goods”

« marchandises dangereuses »

“dangerous goods” means a product, substance or organism included by its nature or by the regulations in any of the classes listed in the schedule;
5. No person shall import, offer for transport, handle or transport any dangerous goods unless

(a) the person complies with all safety requirements and security requirements that apply under the regulations;

(b) the goods are accompanied by all documents that are required under the regulations;

(c) a means of containment is used for the goods that is required or permitted under the regulations; and

(d) the means of containment and means of transport comply with all safety standards that apply under the regulations and display all applicable safety marks in accordance with the regulations.

7. (1) No person shall import, offer for transport, handle or transport dangerous goods in a quantity or concentration that is specified by regulation — or that is within a range of quantities or concentrations that is specified by regulation — unless the person has an emergency response assistance plan that is approved under this section before

(a) importing the dangerous goods;

(b) offering the dangerous goods for transport; or

(c) handling or transporting the dangerous goods, in the case where no other person is required to have an emergency response assistance plan under paragraph (a) or (b) in respect of that handling or transporting.

Improper means of containment

8. No person shall sell, offer for sale, deliver, distribute, import or use a standardized means of containment unless it displays all applicable safety marks in accordance with the regulations.

14. (1) No person shall import, offer for transport, handle or transport dangerous goods, or manufacture or import standardized means of containment, unless the person is financially responsible in accordance with the regulations.

15. (1) For the purpose of ensuring compliance with this Act, an inspector may, subject to section 16 but at any reasonable time, stop any means of transport for which the inspector is designated and enter and inspect any place, or any such means of transport, if the inspector believes on reasonable grounds that in or on the place or means of transport there are

(a) dangerous goods being offered for transport, handled or transported;

(b) means of containment being manufactured, repaired or tested on which a compliance mark is displayed or will be affixed;

(c) standardized means of containment;

(d) books, shipping records, emergency response assistance plans, security plans or other documents that contain any information relevant to the purposes of this Act; or
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(e) computer systems, data processing systems or any other electronic devices or media that contain information relevant to the purposes of this Act, or that have such information available to them.

Duty to report

18. (1) Any person who has the charge, management or control of a means of containment shall report to every person prescribed for the purposes of this subsection any actual or anticipated release of dangerous goods that is or could be in excess of a quantity or concentration specified by regulation from the means of containment if the release endangers, or could endanger, public safety.

Duty to take reasonable emergency measures

(2) Every person required to make a report shall, as soon as possible in the circumstances, take all reasonable emergency measures to reduce or eliminate any danger to public safety that results or may reasonably be expected to result from the release.

19. (1) If an inspector believes on reasonable grounds that doing so is necessary to prevent an anticipated release of dangerous goods that could endanger public safety, or to reduce any danger to public safety that results or could result from an actual release of dangerous goods, the inspector may do any of the following:

(a) remove the dangerous goods, or a means of containment being used to handle or transport the dangerous goods, to an appropriate place, or direct a person to remove the dangerous goods or the means of containment to such a place;

(b) direct a person to do anything else to prevent the release or reduce any resulting danger to public safety, or to refrain from doing anything that might impede the prevention of the release or the reduction of the danger; and

(c) exercise any power set out in section 15

22. (1) Her Majesty in right of Canada may recover the costs and expenses reasonably incurred while taking any measures under section 17 or 19.

27. (1) The Governor in Council may make regulations generally for carrying out the purposes and provisions of this Act, including regulations

(a) prescribing products, substances and organisms to be included in the classes listed in the schedule;

(b) establishing divisions, subdivisions and groups of dangerous goods and of the classes of dangerous goods;

(c) specifying, for each product, substance and organism prescribed under paragraph (a), the class, division, subdivision or group into which it falls;

(d) determining or providing the manner of determining the class, division, subdivision or group into which dangerous goods not prescribed under paragraph (a) fall;

(e) exempting from the application of this Act and the regulations, or any of their provisions, the importing, offering for transport, handling or transporting of dangerous goods;
(j) respecting, for the purposes of paragraph (e), any quantities or concentrations of dangerous goods or ranges of them, respecting the manner of determining those quantities, concentrations or ranges and respecting any circumstances or conditions — including circumstances or conditions regarding premises, facilities or means of containment — under which an activity is exempted under paragraph (e);

(g) respecting circumstances in which any activity or thing is under the sole direction or control of the Minister of National Defence;

(h) respecting circumstances in which dangerous goods must not be imported, offered for transport, handled or transported;

(i) specifying dangerous goods that must not be imported, offered for transport, handled or transported in any circumstances;

(j) respecting safety marks, safety requirements and safety standards of general or particular application;

(j.1) requiring safety management systems to be established by prescribed persons or classes of persons with respect to specified quantities or concentrations of dangerous goods or ranges of them, specifying those quantities, concentrations or ranges, respecting the manner of determining those quantities, concentrations or ranges and respecting the content or requirements of those systems;

(j.2) respecting, in respect of particular dangerous goods, or classes, divisions, subdivisions and groups of dangerous goods, the means of containment to be used in importing, offering for transport, handling or transporting those goods;

(k) specifying quantities or concentrations of dangerous goods, or ranges of them, in relation to which emergency response assistance plans are required to be approved under section 7, and respecting the manner of determining those quantities, concentrations or ranges;

(k.1) respecting the information to be provided in an application for approval of the emergency response assistance plan referred to in section 7;

(k.2) respecting compensation of persons under section 7.2, and specifying the expenses that are authorized to be compensated;

(l) respecting the manner in which records are to be kept under section 9, the information to be included in them and the notices to be issued under that section;

(m) respecting the issuance of notices under section 9, and the contents of those notices;

(n) respecting shipping records and other documents to be used in offering for transport, handling or transporting dangerous goods, the information to be included in those documents and the persons by whom and the manner in which they are to be used and kept;

(o) respecting the qualification, training and examination of inspectors, prescribing the forms of the certificates described in sections 10 and 16.1 and respecting the manner in which inspectors are to carry out their duties and functions under this Act;
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(p) respecting levels of financial responsibility required under subsection 14(1) in respect of any activity referred to in that subsection, and the nature and form of proof that may be requested under subsection 14(2);

(p.1) respecting the authorization of qualified persons referred to in subsection 15(3) and the manner in which they may exercise powers set out in subsection 15(2);

(q) specifying quantities or concentrations of dangerous goods or ranges of them for the purposes of section 18, and respecting the manner of determining those quantities, concentrations or ranges;

(r) prescribing persons or classes of persons who are to receive reports under section 18, and respecting the manner of making the reports, the information to be included in them and the circumstances in which they are not required;

(r.1) respecting the information to be provided in an application for a certificate under section 31;

(s) respecting the manner of applying for, issuing and revoking approvals of emergency response assistance plans under section 7 or certificates under section 31 and providing for the appeal or review of a refusal to issue an approval or certificate or of a revocation of one;

(t) providing for the notification of persons directed to do anything under paragraph 7.1(a), subsection 9(2) or (3), section 17, paragraph 19(1)(a) or (b) or subsection 32(1), for the coming into effect, duration and appeal or review of those directions and for any other incidental matters;

(u) respecting the manner in which amounts are to be paid under paragraph 34(1)(d); and

(v) prescribing persons or classes of persons who are to be prescribed under this Act.

33. (1) Every person is guilty of an offence who contravenes a provision of

(a) this Act;

(b) a direction issued under paragraph 7.1(a), subsection 9(2) or (3), section 17, paragraph 19(1)(a) or (b) or subsection 32(1);

(c) the regulations;

(d) a security measure; or

(e) an interim order.

Punishment

(2) Every person who commits an offence under subsection (1)

(a) is liable on indictment to imprisonment for a term not exceeding two years; or

(b) is liable on summary conviction to a fine not exceeding $50,000 for a first offence, and not exceeding $100,000 for each subsequent offence.

Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act
Importation

6. (1) No person shall import into Canada any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.

Importation and exportation

(2) Subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), import into Canada or export from Canada any animal or plant, or any part or derivative of an animal or plant.

Interprovincial transport

(3) Subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), transport from one province to another province any animal or plant, or any part or derivative of an animal or plant.

Transport requiring provincial authorization

7. (1) Where the transportation out of a province of an animal or plant, or any part or derivative of an animal or plant, is permitted by the province only if the person who transports it holds a permit issued by a competent authority in that province, no person shall, except under and in accordance with such a permit, transport any animal, plant or part or derivative of an animal or plant from that province to another province.

Provincial prohibitions

(2) No person shall transport from a province to another province any animal or plant, or any part or derivative of an animal or plant, where the animal or plant was taken, or the animal, plant, part or derivative was possessed, distributed or transported, in contravention of any provincial Act or regulation.

Possession

8. Subject to the regulations, no person shall knowingly possess an animal or plant, or any part or derivative of an animal or plant,

(a) that has been imported or transported in contravention of this Act;

(b) for the purpose of transporting it from one province to another province in contravention of this Act or exporting it from Canada in contravention of this Act; or

(c) for the purpose of distributing or offering to distribute it if the animal or plant, or the animal or plant from which the part or derivative comes, is listed in Appendix I to the Convention.

Documents

9. Every person who imports into Canada, exports from Canada or transports from one province to another province an animal or plant, or any part or derivative of an animal or plant, shall keep in Canada, in the prescribed manner and for the prescribed period, any documents that are required to be kept by the regulations.
Inspections

14. (1) For the purpose of ensuring compliance with this Act and the regulations, an officer may at any reasonable time enter and inspect any place in which the officer believes, on reasonable grounds, there is any thing to which this Act applies, or there are any documents relating to the administration of this Act or the regulations, and the officer may

(a) open or cause to be opened any container that the officer believes, on reasonable grounds, contains such a thing;

(b) inspect any such thing and take samples free of charge;

(c) require any person to produce for inspection or copying, in whole or in part, any document that the officer believes, on reasonable grounds, contains any information relevant to the administration of this Act or the regulations; and

(d) seize any thing by means of or in relation to which the officer believes, on reasonable grounds, this Act or the regulations have been contravened or that the officer believes, on reasonable grounds, will afford evidence of a contravention of this Act or the regulations.

Liability for costs

20.1 If a thing is seized under this Act or under a warrant issued under the Criminal Code, the importer or exporter, as the case may be, and the person who owned the thing at the time it was seized, the person who had charge or control of the thing immediately before it was seized and the person who possessed it immediately before it was seized are jointly and severally, or solidarily, liable for all the costs of seizure, detention, maintenance and forfeiture, including any destruction or disposal costs, incurred by Her Majesty in right of Canada in relation to the thing in excess of any proceeds of its disposition, if any.

Regulations

21. (1) The Governor in Council may make regulations for carrying out the purposes of this Act, including regulations

(a) respecting the issuance, renewal, revocation and suspension of permits and the circumstances in which persons may be exempted from holding such permits;

(b) respecting the exemption of animals and plants, and parts and derivatives of animals and plants, from the operation of any provision of this Act;

(c) amending the definitions “animal” and “plant”

(i) for the purposes of subsection 6(1),

(ii) for the purposes of subsection 6(2),

(iii) for the purposes of subsection 6(3),

(A) in order to protect species that are subject to the legislative authority of Parliament, or

(B) at the request of the minister who is responsible for the protection of wild animal or plant species of the government of the province into which the animal or plant is to be
transported, where that minister is of the opinion that the transport would be harmful to the environment of that province,

(iv) for the purposes of section 7, in order to protect species of animals and plants in a province, other than those species that are subject to the legislative authority of Parliament, at the request of the minister who is responsible for the protection of wild animal or plant species of the government of the province, and

(v) for the purposes of section 8;

(d) specifying the places and times at which, and the manner in which, animals and plants, classes of animals and plants and parts and derivatives of animals and plants may be imported into Canada and exported from Canada;

(e) respecting the marking of animals and plants, and parts and derivatives of animals and plants, and the packaging for animals, plants and parts and derivatives of animals and plants for importation into or exportation from Canada or for transportation from one province to another province;

(f) prescribing the documents to be kept by persons mentioned in section 9 and the manner of keeping the documents and the period for which they are to be kept;

(g) specifying the terms and conditions under which animals and plants, and parts and derivatives of animals and plants, are to be removed from Canada under section 18;

(h) prescribing the manner in which the proceeds resulting from the payment of fines or the execution of orders under this Act shall be distributed;

(i) prescribing the fees or charges to be paid in connection with the administration of this Act and the terms and conditions of paying such fees and charges; and

(j) generally to implement the Convention.

Idem

(2) The Governor in Council shall make regulations specifying the animals and plants that are listed as “fauna” and “flora”, respectively, in an appendix to the Convention and shall, not later than ninety days after any change to a list in an appendix to the Convention, amend the regulations to reflect that change.

Offence and punishment

22. (1) Every person who contravenes a provision of this Act or the regulations

(a) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of a person that is a corporation, to a fine not exceeding fifty thousand dollars, and

(ii) in the case of a person other than a person referred to in subparagraph (i), to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) is guilty of an indictable offence and is liable
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(i) in the case of a person that is a corporation, to a fine not exceeding three hundred thousand dollars, and

(ii) in the case of a person other than a person referred to in subparagraph (i), to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or to both.

▶ Canada Agricultural Products Act

“agricultural product” means
(a) an animal, a plant or an animal or plant product,
(b) a product, including any food or drink, wholly or partly derived from an animal or a plant, or
(c) a product prescribed for the purposes of this Act;

Prohibition
17. No person shall, except in accordance with this Act or the regulations,
(a) market an agricultural product in import, export or interprovincial trade;
(b) possess an agricultural product for the purpose of marketing it in import, export or interprovincial trade; or
(c) possess an agricultural product that has been marketed in contravention of this Act or the regulations.

Powers of inspectors
21. (1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, subject to section 22, enter and inspect any place, or stop any vehicle, in which the inspector believes on reasonable grounds there is any agricultural product or other thing in respect of which this Act or the regulations apply, and the inspector may
(a) open any container that the inspector believes on reasonable grounds contains an agricultural product;
(b) inspect any agricultural product or other thing and take samples of it free of charge; and
(c) require any person to produce for inspection or copying, in whole or in part, any record or other document that the inspector believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations.

Regulations
32. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and prescribing anything that is to be prescribed under this Act and, without limiting the generality of the foregoing, may make regulations
(a) prescribing agricultural product legends and grade names and generally respecting agricultural product legends, grade names and other labels;
(b) for the licensing, registration or accreditation of any activity or operation to which this Act applies, including regulations

(i) prescribing the records to be kept in respect of any licensed, registered or accredited activity or operation,

(ii) governing the registration of establishments and the licensing of dealers and operators of establishments,

(iii) governing the renewal, cancellation and suspension of the registration of establishments and the licences of dealers and operators of establishments,

(iv) providing for the accreditation of operations involving inspection, analysis or grading, and

(v) requiring dealers or operators of establishments to post bonds or to provide suretyships, or to provide other security satisfactory to the Minister, as a guarantee that they will comply with the terms and conditions of any licence or registration issued to them and providing for the forfeiture of the bonds, suretyships or other security if they fail to comply with those terms and conditions;

(c) governing the design, construction, hygiene, sanitation and maintenance of registered establishments and of the equipment and facilities in them and governing

(i) the operation of registered establishments and the suspension of their operations, and

(ii) the procedures to be followed and the standards to be maintained in registered establishments for the preparation of agricultural products;

(d) providing for the inspection of establishments and the inspection, analysis, testing, grading and sampling of agricultural products;

(e) governing analyses related to pesticide residues and any other dangerous or potentially dangerous substance that is found on, in or near agricultural products;

(f) establishing grades and standards, including standards of wholesomeness, for agricultural products and establishing standards for containers;

(g) regulating or prohibiting the preparation of any agricultural product;

(h) providing for measures, including slaughter and destruction, to be taken respecting agricultural products or other things that

(i) are, or are suspected on reasonable grounds of being, injurious to health, or

(ii) do not meet, or are suspected on reasonable grounds of not meeting, the requirements of this Act and the regulations

and prohibiting any slaughter or destruction that is not in accordance with those measures;

(i) providing for systems to ascertain the places of origin or destination of agricultural products;
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(j) establishing requirements governing the seizure and detention of things under this Act, providing for the safe-keeping and disposal of things seized, detained or forfeited under this Act and regulating the inspection of places and the stopping of vehicles;

(k) regulating or prohibiting the marketing of any agricultural product, other than a fresh or processed fruit or vegetable, in import, export or interprovincial trade and establishing terms and conditions governing that marketing;

(l) regulating or prohibiting the marketing of any fresh or processed fruit or vegetable in import, export or interprovincial trade, including regulations

(i) establishing the terms and conditions governing that marketing,

(ii) defining fresh or processed fruits or vegetables,

(iii) controlling the consignment selling of fresh fruits and vegetables,

(iv) permitting the Minister or a delegate of the Minister to exempt the marketing of any fresh or processed fruit or vegetable in import or interprovincial trade from any of the requirements of this Act or the regulations where the Minister or delegate considers that it is necessary to do so in order to alleviate a shortage in Canada of the fruit or vegetable or an equivalent fruit or vegetable, and

(v) permitting the Minister or a delegate of the Minister to exempt the marketing of any fresh or processed fruit or vegetable in export trade from any of the requirements of this Act or the regulations;

(m) prescribing agricultural products for the purposes of sections 9 to 12;

(n) for exempting any person, establishment, agricultural product, class of agricultural products, container or other thing from the application of any or all of the provisions of this Act or the regulations;

(o) providing for the collection of market information and statistics, the publication of studies dealing with the marketing of agricultural products and the conduct of surveys on any matter related to this Act or the regulations; and

(p) prescribing any fees or charges required for the administration of this Act or the regulations and the interest that shall accrue on unpaid fees or charges.

Indictable or summary conviction offences

33. (1) Every person who contravenes any provision of this Act or the regulations

(a) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding $50,000 or to imprisonment for a term not exceeding six months, or to both; or

(b) is guilty of an indictable offence and liable to a fine not exceeding $250,000 or to imprisonment for a term not exceeding two years, or to both.

Health of Animals Act

Notification by owner, etc.
5. (1) A person who owns or has the possession, care or control of an animal shall notify the nearest veterinary inspector of the presence of a reportable disease or toxic substance, or any fact indicating its presence, in or around the animal, immediately after the person becomes aware of the presence or fact.

Notification by veterinarian, etc.

(2) Immediately after a person who is a veterinarian or who analyses animal specimens suspects that an animal is affected or contaminated by a reportable disease or toxic substance, the person shall so notify a veterinary inspector.

Selling or disposing of diseased animals

11. No person shall, without a licence issued by an inspector or officer, sell or offer or expose for sale or otherwise transfer the ownership of

(a) any animal or any part of an animal that the person knows is affected or contaminated by, or has been exposed to, any reportable disease or toxic substance, or

(b) any animal product or animal by-product that the person knows was obtained from an animal that was affected or contaminated by, or was exposed to, any reportable disease or toxic substance at the time of its death,

whether or not the person is the owner of the animal, animal product or animal by-product.

Regulations prohibiting importation

14. The Minister may make regulations prohibiting the importation of any animal or other thing into Canada, any part of Canada or any Canadian port, either generally or from any place named in the regulations, for such period as the Minister considers necessary for the purpose of preventing a disease or toxic substance from being introduced into or spread within Canada.

Prohibition of possession or disposition

15. (1) No person shall possess or dispose of an animal or thing that the person knows was imported in contravention of this Act or the regulations.

Importation into Canada

16. (1) Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

Removal of imports

18. (1) Where an inspector or officer believes on reasonable grounds that an animal or thing has been imported into Canada and that it
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(a) was imported in contravention of this Act or the regulations,

(b) is or could be affected or contaminated by a disease or toxic substance, or

(c) is a vector,

the inspector or officer may, whether or not the animal or thing is seized, require the owner or the person having the possession, care or control of the animal or thing to remove it from Canada.

Certificate required

19. (1) No person shall export an animal from Canada by vessel or aircraft unless

(a) prior notice of the export of the animal has been given to a customs officer in charge of the place where the animal is to board the vessel or aircraft and the animal has been presented to a veterinary inspector in accordance with subsection (2) at that place; and

(b) a certificate of the veterinary inspector has been received by the person certifying that all the prescribed requirements respecting the health, protection and transportation of the animal have been complied with.

Inspectors and officers may exercise Minister’s powers

33. An inspector or officer may, subject to any restrictions or limitations specified by the Minister, exercise any of the powers and perform any of the duties or functions of the Minister under this Act, except the powers mentioned in section 27.

Fees, charges and costs for inspections, etc.

60. (1) Her Majesty, and any person who has entered into an agreement with the Minister under section 34, may recover from any person referred to in subsection (2) any prescribed fees or charges and any costs incurred by Her Majesty or the other person, as the case may be, in relation to anything required or authorized under this Act or the regulations, including, without restricting the generality of the foregoing,

(a) the inspection, treatment, segregation, quarantine, testing or analysis of a place, animal or thing, as the case may be, or the identification, storage, removal, disposal or return of an animal or thing, required or authorized under this Act or the regulations; and

(b) the forfeiture, disposal, seizure or detention of an animal or thing under this Act or the regulations.

64. (1) The Governor in Council may make regulations for the purpose of protecting human and animal health through the control or elimination of diseases and toxic substances and generally for carrying out the purposes and provisions of this Act, including regulations

(a) prohibiting or regulating the importation, exportation and possession of animals and things in order to prevent the introduction of any vector, disease or toxic substance into Canada or into another country from Canada;

(b) for subjecting animals and things that may transmit a disease or toxic substance to quarantine or requiring their destruction on importation into Canada and for requiring the
disposal on importation into Canada of things that may transmit a disease or toxic substance;

(c) requiring proof of the fact that animals imported into or passing through Canada have not been brought from any place where there was, at the time of their embarkation, a disease or toxic substance;

(d) prohibiting or regulating the importation of garbage into Canada and regulating the handling and disposal of garbage imported into Canada;

(e) governing the use of food lockers on ships in Canadian waters in order to prevent the introduction of any disease or toxic substance into Canada;

(f) for controlling or eradicating, or preventing the spread of, vectors, diseases and toxic substances and for quarantining, segregating, treating or disposing of, or for dealing generally with, animals or things that

(i) are, or are suspected of being, affected or contaminated by a disease or toxic substance,

(ii) have been in contact with or in close proximity to animals or things that were, or are suspected of having been, affected or contaminated by a disease or toxic substance at the time of contact or close proximity, or

(iii) are, or are suspected of being, vectors, the causative agents of disease or toxic substances;

(g) for segregating and confining animals within certain limits, establishing areas of inspection or quarantine and establishing eradication areas where animals may be inspected, segregated and tested for any disease or toxic substance;

(h) prohibiting or regulating the movement in Canada of

(i) animals, animal products, animal by-products, vectors, the causative agents of disease, animal food, hay, straw and fodder, and

(ii) things that are used in respect of animals and that may be affected or contaminated by a disease or toxic substance;

(i) for the humane treatment of animals and generally

(i) governing the care, handling and disposition of animals,

(ii) governing the manner in which animals are transported within, into or out of Canada, and

(iii) providing for the treatment or disposal of animals that are not cared for, handled or transported in a humane manner;

(j) for declaring as infected, and constituting as an infected place, any airport, market, pen, railway yard, stockyard, conveyance or wharf on or in which any animal, animal product, animal by-product, animal food, hay, straw or fodder, or any other thing used in respect of animals, is exposed for sale or is placed for the purpose of transit;
(k) prohibiting or regulating the movement of persons and conveyances within, into or out of infected places;

(l) for purifying any place or thing that is likely to contain a vector or be contaminated by any disease or toxic substance;

(m) for causing or requiring notice to be given of the appearance of any disease or toxic substance among animals;

(n) prohibiting or regulating the holding of markets, fairs, exhibitions or sales of animals;

(o) for exempting any disease or toxic substance from the operation of any of the provisions of this Act or any regulation, for the imposition of terms and conditions governing the exemption and for otherwise dealing with the disease or toxic substance;

(p) regulating the conduct and operation of zoos and game farms;

(q) prescribing sanitary and health measures for establishments in which animal semen and animal embryos are collected, stored, frozen or processed and generally regulating the manner in which they are collected, stored and distributed;

(r) prohibiting or regulating testing for diseases;

(s) prohibiting or regulating the importation, preparation, manufacturing, preserving, packing, labelling, storing, testing, transportation, sale, conditions of sale, advertising for sale, use and disposal of veterinary biologics and regulating their purity, potency, efficacy and safety;

(t) prohibiting or regulating the feeding to animals of any thing that could introduce or spread any disease or toxic substance to animals;

(u) regulating the construction, operation and maintenance of animal deadyards, rendering plants and animal food factories;

(v) regulating the importation, preparation, manufacturing, preserving, packaging, labelling, storing, distribution, sale, conditions of sale and advertising for sale of products of animal deadyards, rendering plants and animal food factories;

(w) governing the issue, renewal, amendment, suspension and revocation of licences, permits, approvals, certificates or other documents on such terms and conditions as may be required for the purposes of this Act;

(x) requiring animals and things to be marked or to have affixed to them tags, seals or other devices for the purposes of this Act, authorizing inspectors or officers to mark animals and things or to affix to them tags, seals or other devices for the purposes of this Act, and prohibiting the removal, breaking, tampering with or altering of those marks, tags, seals or other devices;

(y) establishing and governing a national identification system for animals that provides for standards and means of identification;
(2) requiring animals to be identified under the system established under paragraph (y) when the ownership or possession of them changes or when they are transported or otherwise dealt with;

(z.1) governing the manufacture, sale, distribution and use of the means of identification to be used in the system established under paragraph (y);

(z.2) governing the collection of information and statistics, the publication of studies and the conduct of surveys on any matter related to this Act or the regulations;

(z.3) requiring records to be kept respecting activities in respect of which this Act or the regulations apply;

(z.4) prescribing any fees or charges, or the manner of calculating any fees or charges, required for carrying out the purposes and provisions of this Act or the regulations; and

(z.5) prescribing anything required by this Act to be prescribed, other than anything to be prescribed by the Minister.

General offence

65. (1) Every person who contravenes any provision of this Act, other than section 15, or the regulations or who refuses or neglects to perform any duty imposed by or under the Act or the regulations is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

The Meat Inspection Act

7. No person shall export a meat product out of Canada unless

(a) it was prepared or stored in a registered establishment that was operated in accordance with this Act and the regulations;

(b) that person provides an inspector with evidence satisfactory to the Minister that the meat product meets the requirements of the country to which it is being exported; and

(c) that person obtains a certificate from an inspector authorizing the export of that meat product.

Interprovincial trade

8. No person shall send or convey a meat product from one province to another unless

(a) it was prepared or stored in a registered establishment that was operated in accordance with this Act and the regulations; and

(b) it complies with prescribed standards and is packaged and labelled in the manner prescribed.

Import
9. (1) No person shall import a meat product into Canada unless

(a) at the time it was prepared for export, the country from which it originated and any country in which it was processed had meat inspection systems, those systems and the relevant establishments in those countries were approved in writing by the Minister before that time and the approvals were valid at that time;

(b) that person provides an inspector with evidence satisfactory to the Minister that it meets the prescribed standards for imported meat products;

(c) it meets the prescribed standards for imported meat products; and

(d) it is packaged and labelled in the manner prescribed.

Delivery for inspection

(2) Every person who imports a meat product into Canada shall, as soon as possible, deliver it, in its imported condition, to a registered establishment for inspection by an inspector.

10. (1) No person shall advertise or sell or have in his possession for any such purpose an imported meat product that

(a) has been imported into Canada in contravention of subsection 9(1); or

(b) has not been delivered to a registered establishment for inspection as required by subsection 9(2).

Powers of inspectors

13. (1) For the purposes of this Act and the regulations, an inspector may, subject to subsections (3) to (5), at any time enter any place or stop and enter any vehicle in which the inspector believes on reasonable grounds there is any meat product or other thing to which this Act applies and may

(a) open any package that the inspector believes on reasonable grounds does not comply with this Act or the regulations;

(b) inspect and take samples of any meat product or other thing that the inspector believes on reasonable grounds does not comply with this Act or the regulations; and

(c) require any person to produce for inspection, or for the purpose of obtaining copies or extracts, any book, shipping bill, bill of lading or other document or record that the inspector believes on reasonable grounds contains any information relevant to the administration or enforcement of this Act or the regulations.

Regulations

20. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without limiting the generality of the foregoing, may make regulations

(a) prescribing the meat inspection legend and the form and manner in which, terms and conditions on which, persons by whom and things in connection with which it may be applied or used;
(b) governing the registration of establishments and the licensing of the operators thereof, and prescribing the fees payable therefor;

(c) providing for the cancellation and suspension of the registration of registered establishments;

(d) governing the design, construction and maintenance of registered establishments and of the equipment and facilities therein;

(e) respecting the operation and suspension of operation of registered establishments;

(f) prescribing the equipment and facilities to be used, the procedures to be followed and the standards to be maintained in registered establishments to ensure humane treatment and slaughter of animals and hygienic processing and handling of meat products;

(g) providing for the inspection of establishments and registered establishments and the animals and meat products in registered establishments and prescribing the fees payable therefor;

(h) providing for the reinspection of meat products in connection with which the meat inspection legend is applied or used and prescribing the fees payable therefor;

(i) prescribing standards for meat products that are prepared or stored in registered establishments, for meat products that enter into interprovincial or international trade and for meat products in connection with which the meat inspection legend is applied or used;

(j) prescribing standards for imported meat products;

(k) governing the packaging and labelling of meat products and prescribing the specifications for the packages and labels;

(l) respecting the withholding from slaughter of animals and the inspection, holding, treatment, condemnation, confiscation and disposal of animals, meat products or other things in registered establishments that are or are suspected on reasonable grounds of being injurious to health or otherwise in contravention of this Act or the regulations;

(m) respecting the inspection and disposal of imported meat products and prescribing the fees payable for such inspection;

(n) providing for systems for ascertaining the places of origin of the animals to be slaughtered in registered establishments;

(o) prescribing the manner of seizing and detaining anything under this Act and providing for the safe-keeping and disposal of anything seized, detained or forfeited under this Act;

(p) respecting the storage, handling and transportation of meat products and the payment of expenses in connection with that storage;

(q) prohibiting the transportation of meat products unless they are properly packaged and labelled under this Act and the regulations and evidence satisfactory to the Minister is provided that they meet any other requirements of this Act and the regulations;
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(r) exempting any person, establishment, registered establishment, animal, meat product or any class thereof from the application of this Act or the regulations or any provisions thereof, subject to such terms and conditions as the Governor in Council considers appropriate; and

(s) prescribing anything that by this Act is to be prescribed.

Contravention of paragraph 5(b) or 6(b)

21. (1) Every person who contravenes paragraph 5(b) or 6(b) by selling anything contrary thereto is guilty of an indictable offence and liable to a fine not exceeding $250,000 or to imprisonment for a term not exceeding two years, or to both.

Contravention of section 7, 8 or 10

(2) Every person who contravenes section 7 or 8 or who contravenes section 10 by selling any meat product contrary to subsection (1) or (2) thereof

(a) is guilty of an indictable offence and liable to punishment as described in subsection (1); or

(b) is guilty of an offence punishable on summary conviction and liable to punishment as described in subsection (4).

▶ Plant Protection Act

Duty to notify Minister

5. Where a person becomes aware of the existence of a thing that the person suspects to be a pest in an area where the pest has not previously been known to exist, the person shall immediately notify the Minister of the suspected pest and provide the Minister with a specimen of it.

Prohibition

6. (1) Except as permitted under this Act or the regulations, no person shall move, grow, raise, culture or produce any thing that there are reasonable grounds to believe is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest.

Prohibition of movement

(2) Where an inspector believes on reasonable grounds that a thing is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest, the inspector may prohibit the owner of the thing or the person having the possession, care or control of it from moving it without the written authorization of an inspector.

Presentation for inspection

7. (1) No person shall import or admit into Canada or export from Canada any thing that is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest, unless
(a) the thing is or has been presented to an inspector in accordance with subsection (2) at a place designated by the regulations or by an inspector;

(b) the person has produced to an inspector all permits, certificates and other documentation required by the regulations; and

(c) the thing is imported or exported in accordance with any other requirements of the regulations.

Removal of imports

8. (1) Where an inspector believes on reasonable grounds that a thing has been imported into Canada and that it

(a) was imported in contravention of this Act or the regulations, or

(b) is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest,

the inspector may, whether or not the thing is seized, require the owner of the thing or the person having the possession, care or control of it to remove it from Canada.

Assistance in controlling or eradicating pests outside Canada

10. The Minister may provide financial or technical assistance to any person or government outside Canada in controlling or eradicating a pest that affects or could affect plants, or products or by-products of plants, in Canada.

Declaration of infested place

11. (1) Where an inspector suspects or determines that a place is infested with a pest and is of the opinion that the pest could spread, the inspector may in writing declare that the place is infested.

Inspection

25. (1) For the purpose of detecting pests or ensuring compliance with this Act and the regulations, an inspector may

(a) subject to section 26, at any reasonable time, enter and inspect any place, or stop any conveyance, in which the inspector believes on reasonable grounds there is any thing in respect of which this Act or the regulations apply;

(b) open any receptacle, baggage, package, cage or other thing that the inspector believes on reasonable grounds contains any thing in respect of which this Act or the regulations apply;

(c) examine any thing in respect of which this Act or the regulations apply and take samples of it;

(d) require any person to produce for inspection or copying, in whole or in part, any record or other document that the inspector believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations; and

(e) conduct any tests or analyses or take any measurements.
38. Where a person must, by or under this Act or the regulations, do anything, including provide and maintain any area, office, laboratory or other facility under section 20, or permit an inspector to do anything, Her Majesty is not liable

(a) for any costs, loss or damage resulting from the compliance; or

(b) to pay any fee, rent or other charge for what is done, provided, maintained or permitted.

Compensation for treatment, etc.

39. (1) The Minister may, in accordance with the regulations, order compensation to be paid from the Consolidated Revenue Fund in respect of

(a) any treatment of a place or any treatment, storage or disposition of a thing required under this Act or the regulations;

(b) any prohibition or restriction on the use of a place or on the movement of persons or things within, into or out of a place imposed under this Act or the regulations; or

(c) any prohibition or restriction on the use of a thing or on the sale or other disposition of a thing imposed under this Act or the regulations.

44. (1) Her Majesty may recover from any person referred to in subsection (2) any prescribed fees or charges and any costs incurred by Her Majesty in relation to anything required or authorized under this Act or the regulations, including, without limiting the generality of the foregoing,

(a) the inspection, treatment, testing or analysis of a place or thing, or the quarantine, storage, removal, disposal or return of a thing, required or authorized under this Act or the regulations; and

(b) the seizure, confiscation, forfeiture, detention or disposal of a thing under this Act or the regulations.

47. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and prescribing anything that is to be prescribed under this Act, including regulations

(a) prohibiting or regulating the importation and admission into Canada, the exportation from Canada and the processing, handling, packaging, distribution, sale, disposition, loading, unloading and movement within Canada of pests and other things that are or could be infested with pests or that constitute or could constitute biological obstacles to the control of pests;

(b) governing the issue, renewal, amendment, suspension and revocation of permits, certificates or other documents on such terms and conditions as may be required for the purposes of this Act;

(c) prohibiting or regulating the importation of food or garbage into Canada;

(d) regulating any activity referred to in section 6;
(e) designating places of entry where things may be presented for inspection and admittance into Canada;

(f) governing investigations and surveys to detect pests and to identify areas of infestation;

(g) respecting the declaration of things infested with pests and things free of infestation;

(h) respecting the declaration under sections 11, 12 and 15 of places that are infested;

(i) prohibiting or regulating the use of places that are, or are suspected of being, infested with pests and of things that are, or are suspected of being, pests or infested with pests or that constitute or could constitute biological obstacles to the control of pests;

(j) governing the quarantine of things;

(k) for the establishment of inspection and treatment centres and quarantine stations;

(l) governing the disposition of things that are, or are suspected of being, infested with pests or that constitute or could constitute biological obstacles to the control of pests;

(m) respecting the detention or disposition of things seized, forfeited or confiscated under this Act;

(n) governing the treatment or manner of treatment to be administered to places or things and requiring persons to administer or to arrange the administration of the treatment;

(o) governing the removal from places where treatment is administered of persons or things that present obstacles to the treatment or that may be adversely affected by it;

(p) requiring things to be marked or identified or to have affixed to them labels, tags, seals or other devices and prohibiting the removal, breaking, tampering with or altering of those marks, labels, tags, seals or other devices;

(q) prescribing the terms and conditions on which compensation may be ordered under section 39 and the maximum levels of compensation;

(r) requiring documents to be furnished to or by inspectors; and

(s) prescribing any fees or charges, or the manner of calculating any fees or charges, required for carrying out the purposes and provisions of this Act or the regulations.

General offence

48. (1) Every person who contravenes any provision of this Act, other than section 9, or the regulations or who refuses or neglects to perform any duty imposed by or under the Act or the regulations is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.
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- Biosecurity Act 1993 (as reprinted at July 2010)

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An Act to restate and reform the law relating to the exclusion, eradication, and effective management of pests and unwanted organisms
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1 Short Title and commencement

(1) This Act may be cited as the Biosecurity Act 1993.

(2) This Act shall come into force on 1 October 1993.

Part 1 - Preliminary

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

approved means approved by the Director-General

approved identification means any method of identifying animals or animal products approved under section 50 or prescribed under this Act

arrive in New Zealand,—

(a) in relation to an aircraft, means to land (whether or not on land) in New Zealand territory after a flight originating outside New Zealand territory:

(b) in relation to any other craft, means to anchor, berth, or come ashore in New Zealand territory after a voyage originating outside New Zealand territory:

(c) in relation to a person, means to reach land within New Zealand territory after a flight or voyage originating outside New Zealand territory

authorised person means a person for the time being appointed an authorised person under section 103

Authority means the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996

biosecurity clearance means a clearance under section 26 for the entry of goods into New Zealand

biosecurity control area means a place that is—

(a) part of a port approved as a place of first arrival in accordance with section 37(1); and

(b) by written agreement with the port’s operator, under the control of the Director-General for the purposes of this Act

border infringement offence means an infringement offence specified as a border infringement offence by regulations made under this Act

chief executive means the head of a department; and includes a chief executive appointed under the State Sector Act 1988

chief technical officer means a person appointed a chief technical officer under section 101

consultation includes actions taken before the enactment of this Act in anticipation of its enactment; and consult has a corresponding meaning

containment condition that is still operative, at any time, means a condition of a kind authorised by section 13(2)(ab)(i) of the Animals Act 1967—
(a) in the case of a condition requiring an organism to be held indefinitely, where the condition has not before that time been revoked; and

(b) in the case of a condition requiring an organism to be held for a specified period, where the period has not before that time expired; and

(c) in the case of a condition requiring an organism to be held until the happening of a specified event, where the event has not before that time happened

containment facility means a place approved in accordance with section 39 for holding organisms that should not, whether for the time being or ever, become established in New Zealand

controlled area means an area for the time being declared under subsection (2) of section 131 to be an area that is controlled for the purposes of that section

conveyance includes any craft, truck, cargo container, horsebox, wagon, cart, dray, cage, kennel, or vehicle that is or has been used for the conveyance of, or has come into contact with, any organism or organic material

costs and benefits includes costs and benefits of any kind, whether monetary or non-monetary

craft includes any aircraft, ship, boat, or other machine or vessel used or able to be used for the transportation of people or goods, or both, by air or sea

department has the same meaning as in the State Sector Act 1988

Director-General means the chief executive of the Ministry

environment includes—

(a) ecosystems and their constituent parts, including people and their communities; and

(b) all natural and physical resources; and

(c) amenity values; and

(d) the aesthetic, cultural, economic, and social conditions that affect or are affected by any matter referred to in paragraphs (a) to (c)

exclusive economic zone means the zone of that name described in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

goods means all kinds of moveable personal property

import, subject to section 4, means bring within New Zealand territory from outside that territory; and imported has a corresponding meaning

import health standard means a document issued under section 22

incidentally imported new organism has the same meaning as in section 2(1) of the
infringement fee means the amount prescribed by regulations made under this Act as the infringement fee for an infringement offence

infringement offence means an offence prescribed by regulations made under this Act as an infringement offence

inspector means a person who is appointed an inspector under section 103

local authority means a regional council or territorial authority

management agency means the department, authority, or body corporate specified in a pest management strategy as the agency given the task of implementing the strategy

marae includes the area of land on which all buildings such as the wharehenui (meeting house), the wharekai (dining room), ablution blocks, and any other associated buildings are situated

Minister means a Minister of the Crown; and

(a) in relation to a national pest management strategy, means the Minister who recommended the making of the order under section 68 making the strategy; and

(b) in relation to a proposal for a national pest management strategy that has been notified, means the Minister who notified the proposal

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

natural and physical resources means—

(a) organisms of all kinds; and

(b) the air, water, and soil in or on which any organism lives or may live; and

(c) landscape and land form; and

(d) geological features; and

(e) structures of all kinds; and

(f) systems of interacting living organisms and their environment

new organism has the same meaning as in section 2 of the Hazardous Substances and New Organisms Act 1996

New Zealand territory means the land and the waters enclosed by the outer limits of the territorial sea (as described in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

occupier, —

(a) in relation to any place physically occupied by any person, means that person; and

(b) in relation to any other place, means the owner of the place; and
(c) in relation to any place, includes any agent, employee, or other person, acting or apparently acting in the general management or control of the place

**organic material**, subject to subsection (2), means any material that is or contains—
(a) material derived from an organism; or
(b) an excretion or secretion of an organism,—
(whether or not it also contains material derived from a human being or contains the secretions of a human being)

**organism**—
(a) does not include a human being or a genetic structure derived from a human being:
(b) includes a micro-organism:
(c) subject to paragraph (a), includes a genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of an entity):
(d) includes an entity (other than a human being) declared by the Governor-General by Order in Council to be an organism for the purposes of this Act:
(e) includes a reproductive cell or developmental stage of an organism:
(f) includes any particle that is a prion

**other department** means a department of State other than the Ministry

**other Minister** means a Minister other than the responsible Minister

**person** includes the Crown, a corporation sole, and a body of persons (whether corporate or unincorporate)

**pest** means an organism specified as a pest in a pest management strategy

**pest agent**, in relation to any pest, means any organism capable of—
(a) helping the pest replicate, spread, or survive; or
(b) interfering with the management of the pest

**pest management strategy** and **strategy** mean a strategy, made under Part 5, for the management or eradication of a particular pest or pests

**place** includes any building, conveyance, craft, land, or structure, and the bed and waters of the sea and any canal, lake, pond, river, or stream

**port** includes an airport, anchorage, harbour, and wharf

**prescribed** means prescribed by regulations made under this Act

**principal officer** means,—
(a) in relation to a regional council, its chief executive; and
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(b) in relation to a region, the chief executive of the region’s regional council and includes an acting chief executive

quarantine means confinement of organisms or organic material that may be harbouring pests or unwanted organisms

quarantine area means a place so designated under section 41

reasonable charge means a charge calculated by the Director-General having regard to the direct and indirect costs of performing the activity concerned

region, in relation to a unitary authority, means the region in respect of which it has the functions, duties, and powers of a regional council

regional council includes the Chatham Islands Council and a unitary authority

regulations means regulations made under this Act

responsible Minister means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

restricted organism means any organism for which a containment approval has been granted in accordance with the Hazardous Substances and New Organisms Act 1996 (including any approval deemed to have been granted under sections 254(1), 254(3), 254(8)(a), 255(1), 255(2), 256, 258(1), and 258(3)) (Note: Ss. 254 to 258 are provisions which have expired).

restricted place means any place that an inspector or an authorised person has declared to be a restricted place under section 130

risk goods means any organism, organic material, or other thing, or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may—

(a) cause unwanted harm to natural and physical resources or human health in New Zealand; or

(b) interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms

road includes all bridges, culverts, and fords forming part of any road

rule means a rule included in a pest management strategy in accordance with section 69B or section 80B

small-scale management programme means a small-scale management programme declared under section 100

territorial authority means a territorial authority
within the meaning of the Local Government Act 2002

threatened species includes any species within the meaning given to the terms extinct in the wild, critically endangered, endangered, and vulnerable by the International Union for Conservation of Nature and Natural Resources

transitional facility means:

(a) any place approved as a transitional facility in accordance with section 39 for the purpose of inspection, storage, treatment, quarantine, holding, or destruction of uncleared goods; or

(b) a part of a port declared to be a transitional facility in accordance with section 39

unauthorised goods means any goods that are—

(a) uncleared goods in a place that is not a transitional facility or a biosecurity control area (other than goods that, in accordance with the authority of an inspector, are—

(i) proceeding from a transitional facility or a biosecurity control area to a transitional facility, biosecurity control area, or a containment facility; or

(ii) being exported from New Zealand); or

(b) uncleared goods that are in a transitional facility or a biosecurity control area to which those goods proceeded, other than in accordance with the authority of an inspector, from some other transitional facility, or biosecurity control area, and have not later received the authority of an inspector to remain there; or

(c) goods which have been given a biosecurity clearance by an inspector following receipt by that inspector of false, incomplete, or misleading information concerning the goods; or

(d) a restricted organism in a place that is not a containment facility (other than an organism that,—

(i) in accordance with the authority of an inspector, is proceeding from a transitional facility, biosecurity control area, or a containment facility to another transitional facility, biosecurity control area, or containment facility; or

(ii) is in a transitional facility or biosecurity control area to which it has proceeded in accordance with the authority of an inspector; or

(iii) in accordance with the authority of an inspector, is being exported from New Zealand); or

(e) a restricted organism that is in a containment facility to which it proceeded other than in accordance with the authority of an inspector, and has not later received the authority of an inspector to remain there

uncleared goods means imported goods for which no biosecurity clearance has been given

unitary authority has the meaning given to it by section 5(1) of the Local Government Act 2002
unwanted organism means any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health; and

(a) includes—

(i) any new organism, if the Authority has declined approval to import that organism; and

(ii) any organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996; but

(b) does not include any organism approved for importation under the Hazardous Substances and New Organisms Act 1996, unless—

(i) the organism is an organism which has escaped from a containment facility; or

(ii) a chief technical officer, after consulting the Authority and taking into account any comments made by the Authority concerning the organism, believes that the organism is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health.

working day means any day except—

(a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(ab) the day observed in the region of a regional council as the anniversary day of the province of which the region forms part; and

(b) a day in the period commencing on 20 December in any year and ending with 15 January in the following year.

(2) No goods are an organic material by virtue only of being or containing cardboard, coal, paper, petroleum oil, or a substance derived from coal or petroleum oil.

(3) For the purposes of this Act any organism may be specified, whether in a pest management strategy or for any other purpose, by reference to—

(a) its scientific name; or

(b) the name of a disease it causes; or

(c) both.

3 Application of Act to syndromes of uncertain origin

(1) This subsection applies to a syndrome if—

(a) the scientific community generally accepts that—

(i) it is probably caused by an organism; but

(ii) there is no satisfactory proof that it is in fact caused by an organism; or

(b) the scientific community generally accepts that—

(i) it is caused by an organism; but

(ii) there is no satisfactory evidence available as to the identity or nature of the organism causing it.

(2) This Act shall have effect as if every syndrome to which subsection (1) applies is in fact caused by an organism, which may
be specified (in a pest management strategy or for any other purpose) by reference to the name generally accepted by the scientific community for that syndrome.

(3) In this section, *syndrome* means a group of characteristic symptoms, behaviours, or symptoms and behaviours, generally recognised by the scientific community as proceeding or being likely to proceed from a single cause.

4 **Application of Act to fish and mammals taken in exclusive economic zone**

This Act shall have effect in relation to fish (within the meaning of section 2 of the Fisheries Act 1983) and marine mammals (within the meaning of section 2 of the Marine Mammals Protection Act 1978),—

(a) taken in the exclusive economic zone; and

(b) carried on board a foreign licensed vessel, a vessel registered under the Fisheries Act 1983, or a vessel operated by the Crown,—

as if they are not imported goods.

5 **Act binds the Crown**

Except as is provided in section 87, this Act binds the Crown.

6 **Land may include parts of boundary roads**

(1) Where any pest management strategy applies to land adjoining a road, that strategy may state that the land includes, for the purposes of the strategy, all or any of the portions of road bounded by—

(a) the boundary of that land abutting that road; and

(b) lines extended from the end of that portion of boundary to the middle line of the road; and

(c) the middle line of the road connecting those extended lines.

(2) Any person required or authorised by or under any pest management strategy to do anything on or in relation to land, where the pest management strategy provides that the land includes portions of road in accordance with subsection (1), is also required or authorised to do that thing on those portions of the road.

(3) Nothing in subsection (2) authorises any person to damage any road.

7 **Relationship with other enactments**

(1) Nothing in any enactment specified in this section affects the performance or exercise of any power, function, or duty conferred by Part 7.

(2) Except—

(a) to the extent provided in subsections (1), (5), and (6) and section 7A; and

(b) to the extent that those enactments are expressly amended by section 168(1),—

this Act must not be construed so as to affect or derogate in any way from the provisions of the Soil Conservation and Rivers Control Act 1941, the Forests Act 1949, the Wildlife Act 1953, the Health Act 1956, the Animal Welfare Act 1999, the
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Wild Animal Control Act 1977, the Reserves Act 1977,

(3) This Act must not be construed so as to affect or derogate in any way from the provisions of the Customs and Excise Act 1996 and, in particular, the provisions of this Act do not affect the obligations of any person under the Customs and Excise Act 1996 in relation to goods.

(4) The provisions of this Act in so far as they relate to risk goods must not be construed to take precedence over the powers provided under the Misuse of Drugs Act 1975 in relation to any controlled drug (as defined in section 2(1) of that Act).

(5) The provisions of the Wild Animal Control Act 1977 do not apply to prevent or inhibit the exercise of any powers under the Biosecurity Act 1993 on any land (other than land administered under the Acts listed in Schedule 1 of the Conservation Act 1987) when those powers are used in respect of—

(a) a pest; or

(b) an unwanted organism—

that may be transmitted by any animal to which the Wild Animal Control Act 1977 applies.

(6) The provisions of the Wildlife Act 1953 (including any regulations made under that Act)—

(a) do not apply to prevent or inhibit the exercise or performance of any powers, functions, or duties under this Act when those powers, functions, or duties are exercised or performed in respect of an unwanted organism; and

(b) do not allow or authorise the contravention of any provision of this Act in respect of wildlife that is also an unwanted organism.

7A Relationship with Resource Management Act 1991

(1) Where any action taken in accordance with any provision in Part 6 in an attempt to eradicate any organism would be in breach of the provisions of Part 3 of the Resource Management Act 1991, the responsible Minister may exempt the actions taken in relation to that organism from the provisions of Part 3 of the Resource Management Act 1991 for up to 20 working days if that Minister is satisfied that it is likely that—

(a) the organism is not established in New Zealand, the organism is not known to be established in New Zealand, or the organism is established in New Zealand but is restricted to certain parts of New Zealand; and

(b) the organism has the potential to cause all or any of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in New Zealand or if it becomes established throughout New Zealand; and

(c) it is in the public interest that action be taken immediately in an attempt to eradicate the organism.
(2) Before making a decision under subsection (1), the responsible Minister must consult the relevant consent authority (to the extent that is possible in the circumstances), and may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication attempt.

(3) After making a decision under subsection (1), the responsible Minister must give public notice of the Minister’s decision in such a manner as the Minister thinks fit.

(4) The public notice must specify—
(a) the organism to be eradicated; and
(b) the principal actions that may be taken in the attempt to eradicate the organism; and
(c) the areas affected by the action.

(5) A failure to comply with the provisions of subsections (2) and (3) does not affect the validity of any exemption given under this section.

(6) Where any action has been exempted from Part 3 of the Resource Management Act 1991 under subsection (1) and the responsible Minister considers that it is necessary to continue action beyond the duration of the exemption to attempt to eradicate the organism, that Minister may recommend that regulations be made continuing the exemption and the Governor-General may from time to time, by Order in Council, make regulations for that purpose.

(7) Regulations made under this section come into force on the date of notification in the Gazette, or at the time specified in the regulations, whichever is the later, and continue in force until revoked or until a date not later than the day 2 years after the regulations came into force when the regulations expire and are deemed to have been revoked.

(8) Where an exemption is granted under subsection (1) or by regulations made under subsection (6), the provisions of Part 3 of the Resource Management Act 1991 do not apply to the actions taken to eradicate the organism while the exemption is in force.

(9) Where an exemption from the provisions of the Resource Management Act 1991 has been granted under subsection (1) or by regulations made under subsection (6) and that exemption has ended (either by the expiry of the exemption under subsection (1) or by the revocation of the regulations, as the case may be), the provisions of the Resource Management Act 1991 then apply and the responsible Minister must remedy or mitigate the adverse effects of any actions taken under Part 6 and to which the provisions of the Resource Management Act 1991, but for the exemption under this section, would otherwise have applied.
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(10) For the purposes of this section, consent authority has the same meaning as in section 2(1) of the Resource Management Act 1991.

Part 2
Functions, powers, and duties

Ministers

8 Responsibilities of responsible Minister

(1) In addition to being responsible for the administration of this Act, the responsible Minister has responsibility for—

(a) providing for the co-ordinated implementation of this Act;

(b) recording and co-ordinating reports of suspected new organisms:

(c) managing appropriate responses to such reports.

(2) Section 9 does not limit or affect the generality of subsection (1).

9 Powers of responsible Minister

(1) The responsible Minister has power to—

(a) perform the functions in section 7A:

(b) perform the functions specified in section 10 in relation to those national pest management strategies,—

(i) where the responsible Minister has prepared a proposal under section 56; or

(ii) where some other person has requested the responsible Minister to notify a proposal:

(c) recommend to the Governor-General the making of Orders in Council under section 45(3):

(d) recommend to the Governor-General under section 137(1) the making of Orders in Council imposing levies, and perform other functions in relation to levies:

(e) recommend to the Governor-General under section 165 the making of regulations.

(2) The responsible Minister must not delegate to any person the exercise of any of the powers specified in subsection (1)(a), (c), (d), and (e).

10 Functions of Ministers in relation to proposed national pest management strategies

(1) Any Minister who prepares a proposal for a national pest management strategy under section 56, or who has been requested to notify a proposal for a national pest management strategy, has the function of—

(a) publicly notifying the proposed strategy under section 62(1):

(b) deciding under section 63 whether to appoint a board of inquiry to inquire into and report on the proposed strategy:

(c) where this Act requires the appointment of a board of inquiry to inquire into and report on the proposed strategy,—

(i) appointing the board under section 63(1):

(ii) causing under section 67(3) copies of the report, and all recommendations (if any) on the proposed strategy, made to the
Minister by the board under section 67(2), to be sent to every person who made a submission to the board, and every other person or body the Minister thinks appropriate, and to be published:

(iii) causing public notice to be given under section 67(3) of where and how persons can obtain copies of the report and recommendations:

(iv) considering under section 69(1)(a)(i) the report made by the board under section 67(2) on the proposed strategy:

(d) considering whether or not to recommend to the Governor-General under section 68, the making of an order making the strategy concerned, and if so, doing so:

(e) if an order under section 68 has been made that makes the proposed strategy,—

(i) laying a copy before the House of Representatives under section 70; and

(ii) appointing a management agency in respect of the strategy under section 84(4); and

(iii) disallowing under section 85(4) the operational plan or any part of that plan; and

(iv) reviewing the strategy in accordance with this Act; and

(v) under this Act, amending or revoking the strategy:

(f) recommending under section 90 the making of Orders in Council imposing levies payable to the management agency that is responsible for implementing the strategy and performing other functions in relation to levies.

(2) No Minister may delegate to any person the performance of any of the functions specified in subsection (1)(c)(i), (d), (e), and (f).

11 Other powers of Ministers

(1) Any Minister has power to—

(a) direct the forfeiture of organisms and organic material under section 134(3):

(b) take action under sections 144 and 147 in relation to biosecurity emergencies:

(c) take action under section 145 in relation to biosecurity emergencies:

(d) recommend to the Governor-General under section 150(1) the making of biosecurity emergency regulations, and where such regulations are made, the Minister has the duty of laying them before the House of Representatives under section 150(5):

(e) declare a provisional control programme under section 152(1):

(f) extend under subsection (3) of section 152 a provisional control programme.

(2) A Minister must not delegate to any person the exercise of the powers specified in subsection (1)(b), (d), (e), and (f).

12 Responsible Minister may require information

(1) The responsible Minister may ask any regional council or management agency to give the responsible Minister, in a form the responsible Minister specifies, any information relating to the exercise or performance of any of its functions,
Local authorities

13 Powers of regional councils

(1) Every regional council has, in relation to its region, power to—

(a) cause to be carried out, for the purposes of Part 5,—

(i) monitoring to determine whether or not there are present; and

(ii) surveillance of pests, pest agents, and unwanted organisms:

(b) provide, in accordance with relevant pest management strategies, for the assessment and management or eradication of pests:

(c) prepare proposals for, notify, make, and implement pest management strategies:

(d) if a regional pest management strategy notified by the council has been made under this Act,—

(i) appoint a management agency in respect of the strategy under section 84(4):

(ii) disallow the operational plan or any part of that plan under section 85(4):

(iii) review, amend, or revoke a strategy in accordance with this Act:

(e) declare and implement a small-scale management programme under section 100:

(f) where the council has, under section 100, agreed or arranged that steps to bring an organism under control should be taken by some person or persons other than the council, to meet (in part or in whole) the costs to that person or those persons of the taking of those steps:

(g) gather information, keep records, undertake research, or do any other similar thing, if doing so is necessary or desirable to enable it to act effectively under this Act:

(h) take any action contemplated by or necessary for giving effect to any provision of this Act.

(2) Subject to sections 97 and 97A, every regional council has all the powers of a territorial authority under section 14; and every reference in that section to a territorial authority (or territorial authorities) must be read as including a reference to a regional council (or regional councils).

14 Powers of territorial authorities

Every territorial authority has power to—

(a) take any action any natural person could take under Part 5:
(b) act as a management agency under a pest management strategy:

(c) take any action provided for or required by any pest management strategy:

(d) if, and only if,—

(i) a pest management strategy provides for certain actions to be taken; but does not expressly provide for them to be taken by territorial authorities, territorial authorities of a class or description to which the authority belongs, or the authority; and

(ii) the management agency for the strategy agrees with the authority that the authority will take those actions and the agency will meet the authority’s costs in doing so,—

to take those actions:

(da) to the extent only that any national pest management strategy provides for—

(i) territorial authorities; or

(ii) territorial authorities of a class or description to which the authority belongs; or

(iii) the authority,—

to make contributions towards the costs of the implementation of that strategy, to make such contributions (from the authority’s general funds or from any fund dedicated for the purpose):

(db) to set and assess rates under the Local Government (Rating) Act 2002 for the purpose of making any contributions that the authority is empowered by paragraph (da) to make:

(e) gather information, keep records, undertake research, or do any other similar thing, if doing so is necessary or desirable to enable it to act effectively under this Act:

(f) perform or exercise any function, power, or duty whose performance or exercise is for the time being transferred to it under section 15:

(g) perform or exercise any other function, power, or duty conferred on it by this Act.

15 Transfer of powers, etc, by local authorities

(1) Subject to subsections (2) and (3), a local authority that has an operation under this Act (in this section referred to as the transferor) may transfer the performance of the operation to another local authority (in this section referred to as the transferee), if—

(a) it has used the special consultative procedure specified in section 83 of the Local Government Act 2002; and

(b) in the case of an operation under or relating to a national pest management strategy, before using that procedure it has served notice on the Minister of its intention to do so; and

(c) in the case of an operation under or relating to a regional pest management strategy,—

(i) it is a regional council, and no other regional council is involved in the plan; or

(ii) before using that procedure it has served notice on every regional council involved in the plan (other than itself, if it is a regional council) of its intention to do so; and

(d) it agrees with the transferee that the transfer is desirable.
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on the grounds of—

(i) efficiency; and

(ii) technical or special capability or expertise on the part of the transferee,—

by (and subject to any terms and conditions contained in) a written agreement with the transferee.

(2) The transferor shall not transfer—
(a) the performance of the function of notifying or making any regional pest management strategy under Part 5; or
(b) the exercise of the power of transfer conferred by subsection (1).

(3) The agreement shall contain provisions dealing with the revocation and relinquishment of the transfer; and
(a) the transferor may change or revoke the transfer; and
(b) the transferee may relinquish the transfer,—

accordingly.

(4) While the operation remains transferred to the transferee,—
(a) the transferee’s functions, powers, and duties shall be deemed to be extended to the extent necessary to enable it to undertake the operation; but
(b) the transferor shall continue to be responsible for the operation.

(5) In this section—

operation means a function, power, or duty

perform includes exercise.

Part 3
Importation of risk goods

16 Purpose of Part 3
The purpose of this Part is to provide for the effective management of risks associated with the importation of risk goods.

Arrival of craft

17 Notice of intended arrival of craft in New Zealand

(1) The person in charge of any craft proceeding to New Zealand territory from outside New Zealand territory shall, unless there are reasonable grounds for not doing so,—

(a) give the Director-General notice of when and where, approximately, the craft will enter New Zealand territory, and—

(i) the designated port of entry where it is intended that the craft will first arrive in New Zealand; or

(ii) if it is impossible or impracticable to proceed to any designated port of entry, the destination where it is intended that the craft will first arrive in New Zealand; and

(b) proceed directly to, and arrive in New Zealand at, that port or destination.

(2) Where—
(a) any person in charge of any craft has given the Director-General notice under subsection (1) or this subsection; and
(b) the craft has not arrived in New Zealand since the notice was given; and
(c) the person learns that it is impossible or impracticable to proceed to the designated port of entry or destination notified,—
the person shall, unless there are reasonable grounds for not doing so,—
(d) give the Director-General notice of where, approximately, the craft is, and—
(i) notice of a designated port of entry where it is now intended that the craft will first arrive in New Zealand, if it is possible and practicable to proceed to such a port; or
(ii) notice of the destination where it is now intended that the craft will first arrive in New Zealand, if it is impossible or impracticable to proceed to any designated port of entry; and
(e) proceed directly to, and arrive in New Zealand at, that port or destination.

(3) For the purposes of this section, designated port of entry means—
(a) a port of entry approved under this Act as a place of first arrival—
(i) for all craft; or
(ii) for craft of the kind and description of the craft and, where applicable, arriving for the purposes of the craft; or
(b) a port approved under section 37A for the arrival of the craft.

18 Arrival of craft in New Zealand

(1) The person in charge of any craft that arrives at a place in New Zealand—
(a) shall, if—
   (i) the person has not notified the Director-General under section 17; or
   (ii) the place is not the port or destination notified (or, as the case may be, last notified) under section 17,—
give the Director-General notice of where and (approximately) when the craft arrived; and
(b) shall prevent risk goods from leaving the craft without the permission of an inspector.

(2) The person in charge of any such craft shall, if so required by an inspector, pay a bond for such amount not exceeding $10,000 as the inspector may require to secure due compliance with subsection (1)(b).

19 Persons in charge of certain craft to obey directions of inspector or authorised person

(1) This section applies to a craft, and place in New Zealand, if—
(a) the craft arrives in New Zealand there; or
(b) the craft is carrying risk goods that it was carrying when it arrived in New Zealand at some other place.
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(2) Where this section applies to a craft and place, the person in charge of the craft shall—

(a) obey every reasonable direction given by an inspector as to—

(i) the movement of the craft in the place; or

(ii) the unloading or discharge of risk goods or the disembarkation of crew or passengers from the craft; or

(iii) measures (including any bond required under section 18(2)) to ensure that any risk goods not intended to be unloaded or discharged from the craft are maintained in a secure place under the control of that person; and

(b) within the required time or times, deliver to an inspector a report, in such manner and form, and containing such particulars verified by declaration, and with such supporting documents, as may be required; and

(c) answer all questions relating to the craft or its cargo, crew, passengers, stores, or voyage, asked by an inspector; and every person disembarking from the craft shall, on request by an inspector, make his or her baggage available for inspection by the inspector.

Import health standards

20 Import health permits [Repealed]

21 Criteria for issue of import health permits

[Repealed]

22 Import health standards

(1) The Director-General may, following the recommendation of a chief technical officer, issue an import health standard specifying the requirements to be met for the effective management of risks associated with the importation of risk goods before those goods may be imported, moved from a biosecurity control area or a transitional facility, or given a biosecurity clearance; and may, in a like manner, amend or revoke any import health standard so issued.

(1A) An import health standard issued under this section applies to goods the importation of which involves, or might involve, an incidentally imported new organism.

(2) If an import health standard requires a permit to be obtained from the Director-General before the goods can be imported, moved from a biosecurity control area or a transitional facility, or given a biosecurity clearance, the Director-General may, if he or she thinks fit, issue the permit.

(3) Nothing in this Act obliges the Director-General to have an import health standard in force for goods of any kind or description if, in the Director-General’s opinion, the requirements that could be imposed on the importation of those goods would not be sufficient to enable the purpose of this Part to be met if the importation of those goods were permitted.
(4) An import health standard issued under this section may apply to goods of a certain kind or description imported from—

(a) a country or countries specified in the import health standard; or
(b) countries of a kind or description specified in the import health standard; or
(c) all countries; or
(d) a location or locations specified in the import health standard.

(5) When making a recommendation to the Director-General in accordance with this section, the chief technical officer must have regard to the following matters:

(a) the likelihood that goods of the kind or description to be specified in the import health standard may bring organisms into New Zealand:
(b) the nature and possible effect on people, the New Zealand environment, and the New Zealand economy of any organisms that goods of the kind or description specified in the import health standard may bring into New Zealand:
(c) New Zealand’s international obligations:
(d) such other matters as the chief technical officer considers relevant to the purpose of this Part.

(6) Before making a recommendation to the Director-General on the issue or amendment of an import health standard, the chief technical officer must, unless the standard needs to be issued or amended urgently, or unless the chief technical officer considers that the amendment is minor, consult with those persons considered by the chief technical officer to be representative of the classes of persons having an interest in the standard.

(7) The consultation may be on the import health standard or on a document that analyses or assesses the risks associated with the goods or class of goods to which the goods belong.

(8) Before making a recommendation to the Director-General in accordance with this section the chief technical officer must give notice of the intention to make the recommendation to the chief executive of every department of State whose responsibilities for natural resources or human health may be adversely affected by the issue, amendment, or revocation of the relevant standard.

(9) The Director-General must maintain a register of the import health standards (as amended from time to time) issued under this section.

(10) The register must be available for public information and inspection at the office of the Director-General during normal office hours.

22A Process for independent review panel to be established

(1) The Director-General must, by notice in the Gazette, set out the process by which an independent review panel is to be established to review whether, in developing an import health
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standard, there has been sufficient regard to the scientific evidence about which a person consulted under section 22(6) has raised a significant concern.

(2) The notice required by subsection (1) must cover the following matters:
(a) the criteria for setting up an independent review panel; and
(b) how the Director-General will appoint an independent review panel, including the knowledge and experience required for appointees; and
(c) the procedures to be followed by—
   (i) a person eligible to seek a review under subsection (1); and
   (ii) an independent review panel, in undertaking its review; and
(d) the reporting requirements for an independent review panel.

(3) The Director-General must receive any report from an independent review panel and, as soon as is reasonably practicable, determine the issue in dispute after taking into account the findings and recommendations of the independent review panel, giving reasons for that determination.

(4) The Director-General must issue a notice under subsection (1) not later than 1 July 2008.

23 Revocation and variation of import health permits [Repealed]

24 Exemptions from requirement for import health permit [Repealed]

Clearance of risk goods

25 Goods to be cleared for entry into New Zealand

(1) No person may cause or permit any uncleared goods imported on any craft to leave that craft, except to proceed to a transitional facility or a biosecurity control area.

(2) No person may cause or permit any uncleared goods that are in a transitional facility or biosecurity control area to leave that facility or area, except—
(a) to proceed, in accordance with the authority of an inspector, to another transitional facility, containment facility, or biosecurity control area; or
(b) in accordance with the authority of an inspector, to be exported from New Zealand.

(3) Authority to move uncleared goods given by an inspector in accordance with this section, may be given subject to conditions.

25A Organisms illegally present in New Zealand [Repealed]

26 Clearances
Subject to sections 27 and 28, any inspector may give a clearance for the entry into New Zealand of any goods.

27 Inspector to be satisfied of certain matters

An inspector shall not give a biosecurity clearance for any goods unless satisfied that the goods are not risk goods; or satisfied—

(a) that the goods comply with the requirements specified in an import health standard in force for the goods (or goods of the kind or description to which the goods belong); and

(b) that there are no discrepancies in the documentation accompanying the goods (or between that documentation and those goods) that suggest that it may be unwise to rely on that documentation; and

(c) in the case of an organism, that the goods display no symptoms that may be a consequence of harbouring unwanted organisms; and

(d) that the goods display no signs of harbouring organisms that may be unwanted organisms; and

(e) there has been no recent change in circumstances, or in the state of knowledge, that makes it unwise to issue a clearance.

28 Restrictions on giving clearances

(1) An inspector must not give a biosecurity clearance for goods that are or contain an organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996 or for a new organism.

(1A) However, subsection (1) does not prohibit an inspector from giving a biosecurity clearance for goods the importation of which involves, or might involve, an incidentally imported new organism.

(2) Where any new organism is an organism for which—

(a) the Authority has given approval for importation into containment in accordance with sections 42 or 45 of the Hazardous Substances and New Organisms Act 1996; and

(b) there is in existence a containment facility approved as meeting the standard set by the Authority; and

(c) the organism is able to go to that facility,—

any inspector may authorise that organism to go to that containment facility.

28A Dealing with suspected new organism

(1) Any inspector may seize any organism which the inspector has reason to believe may be a new organism.

(2) The provisions of sections 116 and 117 apply to any organism seized under subsection (1) as if that organism were unauthorised goods.

(3) A chief technical officer may permit an organism seized under this section to be held in the custody of the Director-General for so long as is necessary for the importer to apply to the Authority...
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for a determination under section 26 of the Hazardous Substances and New Organisms Act 1996 that the organism is, or is not, a new organism.

(4) Where an organism is held in accordance with this section, the estimated costs and expenses of the custody and maintenance of the organism must be paid in advance to the Director-General by the importer.

(5) When the Director-General’s custody of an organism ceases, the Director-General must calculate the actual and reasonable costs and expenses of holding the organism and, if those actual and reasonable costs—

(a) exceed the amount paid in accordance with subsection (4), the balance of the costs and expenses are recoverable as a debt due to the Crown from the importer:

(b) are less than the amount paid in accordance with subsection (4), the overpayment must be refunded to the importer.

(6) Where any organism held under subsection (3) is declared to be a new organism, the chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, or any other dealing with, that organism, but must not give a biosecurity clearance for that organism.

28B Biosecurity clearance for certain new organisms and qualifying organisms

Section 28 does not apply to—

(a) a new organism that is subject to a conditional release approval granted under section 38C of the Hazardous Substances and New Organisms Act 1996; or

(b) a qualifying organism approved for importation for release with controls under section 38I of that Act.

29 Restricted organisms to be contained

(1) No person may cause or permit any restricted organism that is in a transitional facility, a biosecurity control area, or a containment facility to leave that facility or area, except—

(a) to proceed, in accordance with the authority of an inspector, to a transitional facility, a biosecurity control area, or a containment facility; or

(b) in accordance with the authority of an inspector, to be exported from New Zealand.

(2) Authority to move a restricted organism given by an inspector in accordance with this section may be given subject to conditions.

Inspections, declarations, etc

30 Uncleared imports

(1) An inspector may require people arriving in New Zealand—

(a) to make declarations in a specified manner as to whether they have any specified goods in their possession as part of their personal effects or baggage; and

(b) to surrender to an inspector control of any uncleared imported risk goods to
enable them to be disposed of in accordance with this Act.

(2) Every person arriving in New Zealand shall permit any inspector to inspect and examine any specified goods in his or her possession as part of his or her personal effects or baggage, and afford to the inspector all reasonable facilities and assistance in carrying out the inspection and examination.

30A Processing unaccompanied goods

(1) Where any imported goods other than goods inspected, examined, or surrendered in accordance with section 30 or section 35, are in a transitional facility or biosecurity control area, an inspector may, for the purpose of determining whether the goods are, or contain, risk goods,—

(a) open any bag, box, parcel, container, or other thing containing the goods:

(b) inspect the goods.

(2) Where any goods in a transitional facility or biosecurity control area are, or contain, risk goods or unauthorised goods, section 116 applies to those goods as if the goods were unauthorised goods seized in accordance with that section.

(3) For the purposes of this section an inspector may, at any reasonable time or times, enter any transitional facility or biosecurity control area and the provisions of section 112 apply.

31 Boarding of craft

(1) Subject to subsection (2), an inspector may, for the purpose of ascertaining the presence of risk goods, require the person in charge of—

(a) any craft, used for the transportation of people or goods, or both, by air, that is within New Zealand territory; or

(b) any craft, used for the transportation of people or goods, or both, by sea, that is within the area of sea adjacent to New Zealand and bounded by the outer limits of the contiguous zone of New Zealand to—

(c) bring the craft to for boarding on being so directed by an inspector; and

(d) by all reasonable means, facilitate the boarding of the craft by an inspector.

(2) A craft carrying an inspector who gives a direction under this section must be clearly identifiable as being a craft in the service of the Crown.

32 Powers relating to craft

(1) Subject to subsection (2), any person who has the power under any provision in this Act to enter any craft and who has reasonable grounds to suspect that a craft in New Zealand territory contains any unwanted organism may direct the master or other person in charge of the craft to—

(a) move it to and stop it at any place within New Zealand territory; or

(b) move it and keep it outside New Zealand territory; or

(c) take any specified action on or in respect of the craft.
(2) Before exercising a power conferred by subsection (1), the person who proposes to exercise the power shall consult the chief executives of—
(a) the New Zealand Customs Service; and
(b) the Ministry of Agriculture and Forestry.

33 Risk goods on board craft

(1) Where there are any risk goods on board a craft that has entered New Zealand territory from outside New Zealand territory, an inspector may direct the master or other person in charge of the craft to take (as the master or person thinks fit) one of the following steps:
(a) deal with the goods in a manner specified by the inspector while the craft is in New Zealand territory; or
(b) move the craft outside New Zealand territory (immediately, or within a period specified by the inspector); or
(c) destroy the goods in a place and manner approved by the inspector for the purpose.

(2) Subject to subsection (3), where the master or person in charge of a craft fails or refuses to comply with a direction under subsection (1), any inspector may—
(a) direct the master or other person in charge of the craft to move the craft outside New Zealand territory (immediately, or within a period specified by the inspector); or
(b) seize and destroy the risk goods concerned.

(3) Where—
(a) an inspector gives a direction under subsection (1) in respect of goods of a particular kind or description on board a craft of a particular kind or description; and
(b) there are for the time being in force under this Act regulations prescribing the manner in which risk goods of that kind or description should be dealt with while on board a craft of that kind or description,—
compliance with those regulations shall be deemed to be a sufficient compliance with the direction.

(4) Nothing in this section limits or affects the generality of section 32.

34 Disembarkation

(1) For the purpose of ascertaining the presence of or controlling any risk goods, a person on board a craft that has arrived in New Zealand shall obey every reasonable direction given to the person concerning disembarkation—
(a) by an inspector; or
(b) on the direction of an inspector, by the person in charge of the craft or a crew member of the craft.

(2) Unless otherwise directed by an inspector, every person arriving in New Zealand shall—
(a) go directly to a biosecurity control area; and
(b) remain there for such reasonable time as an inspector may require to ascertain the presence of any risk goods.
This subsection applies to a person and a biosecurity control area if the person is required by subsection (2) to go directly to the biosecurity control area and remain there for such reasonable time as an inspector may require to ascertain the presence of any risk goods.

An inspector, and any person the inspector calls to the inspector’s assistance, may use such force as is reasonably necessary to—

(a) compel to go to the biosecurity control area concerned a person to whom subsection (3) applies who has been directed by the inspector to go directly there; but—

(i) has failed or refused to do so within a reasonable time of being so directed; or

(ii) has attempted to go instead to some other place; or

(b) detain in the biosecurity control area concerned a person to whom subsection (3) applies who—

(i) has been required by the inspector to remain there for a reasonable time to ascertain the presence of any risk goods; but

(ii) has attempted to leave the biosecurity control area in contravention of the requirement; or

(c) stop, return to, and detain in the biosecurity control area concerned a person to whom subsection (3) applies who has gone to the biosecurity control area, and—

(i) has been required by the inspector to remain there for a reasonable time to ascertain the presence of any risk goods; but

(ii) has left the biosecurity control area in contravention of the requirement; or

(d) stop, return to, and detain in the biosecurity control area concerned a person to whom subsection (3) applies who has gone to the biosecurity control area, but left before the inspector has—

(i) required the person to remain there; or

(ii) had a reasonable time to ascertain the presence of any risk goods.

Every person who has disembarked from a craft that has arrived in New Zealand, whether or not the person boarded the craft in New Zealand, shall make his or her accompanying baggage available for inspection by an inspector.

Every person who is at any time in a biosecurity control area shall, for the purposes of this Part,—

(a) obey any reasonable direction of an inspector in relation to risk goods; and

(b) answer all questions asked by an inspector that are necessary for the inspector to ascertain the presence, nature, origin, or itinerary of any risk goods; and

(c) make available for examination by an inspector any goods in his or her possession or under his or her immediate control so
that the inspector may ascertain the presence of risk goods.

36 Movement of risk goods

Any person who moves or wants to move risk goods within a biosecurity control area shall comply with all reasonable directions given to that person by an inspector concerning the movement of those goods.

37 Approval of ports as places of first arrival

(1) The Director-General may, by written notice to the operator of a port, approve a port as a place of first arrival for all craft or craft of specified kinds or descriptions if satisfied that there are available, and capable of operating to approved standards, all arrangements, facilities (other than office and parking facilities), and systems that the Director-General for the time being reasonably requires, in relation to that port, for the purposes of this Part.

(2) An approval given under subsection (1) may limit the arrival of craft to arrivals for the purposes specified in the approval.

(3) The Director-General must, when considering the arrangements, facilities, and systems available at a port in accordance with subsection (1), have regard to—

(a) the alternative arrangements, facilities, and systems that are or could be made available; and

(b) the cost to the port operator of each alternative arrangement, facility, and system; and

(c) the extent to which each alternative arrangement, facility, and system would assist the Director-General in managing the risks associated with the importation of risk goods.

(4) All arrangements, facilities (other than office or parking facilities), and systems required in accordance with subsection (1) are available for use by the Crown at no expense to the Crown.

(5) The Director-General must,—

(a) within 28 days after approving a port in accordance with subsection (1), publish in the Gazette a notice specifying the name of the port, the day on which it was so approved, any limitation on the kind or description of craft for which the port was approved, any limitation on arrivals to specified purposes, and a place where the notice of approval may be inspected; and

(b) at all reasonable times make the written notice available for inspection at the place specified in the Gazette notice.

(6) The Director-General must be satisfied of the matters referred to in subsection (1), whether or not all of the arrangements, facilities, and systems are under the control of the operator of the port concerned.

(7) Before taking any action under this section, the Director-General must consult in accordance with section 37D.

(8) Where approval is declined under this section, the Director-General must give reasons for his or her decision.
(9) Where a decision under this section is made by a person acting under the delegated authority of the Director-General, the port operator is entitled to have the decision reviewed by the Director-General.

37A Approval of arrival of craft at port not approved as place of first arrival

(1) The Director-General may approve the arrival of a craft at a port that is not approved under section 37 as a place of first arrival for any craft, for craft of the kind or description of that craft, or for craft arriving for the purpose of that craft, if—

(a) a person has requested approval for that craft to arrive in New Zealand at that port; and

(b) the Director-General is satisfied that the risks associated with the importation of risk goods can be managed by imposing conditions on the arrival of the craft at that port.

(2) The approval of the Director-General may be given subject to those conditions that the Director-General considers will manage the risks associated with the importation of risk goods.

(3) Before taking action under this section, the Director-General must consult in accordance with section 37D.

(4) Where a decision under this section is made by a person acting under the delegated authority of the Director-General, the port operator is entitled to have the decision reviewed by the Director-General.

37B Suspension of approval

(1) If the Director-General is no longer satisfied that the provisions of section 37(1) are being met for a port, the Director-General may,—

(a) by written notice to its operator, suspend the port’s approval under section 37(1) for a specified period or until a specified action is taken; or

(b) by written notice in the Gazette, revoke the port’s approval under section 37(1); or

(c) by written notice in the Gazette and written notice to the port’s operator, vary the port’s approval under section 37(1) by varying the kind or description of craft for which the port is approved as a place of first arrival, or by varying the purposes of arrival for which the port is approved as a place of first arrival.

(2) Before taking action under this section, the Director-General must consult in accordance with section 37D.

(3) In exercising a power under this section, the Director-General must observe the rules of natural justice.

37C Port operators

(1) Nothing in section 37 authorises a port operator to require any user of a port—

(a) to use or patronise facilities under the operator’s control; or

(b) to contribute, directly or indirectly, towards the expense of operating facilities under the operator’s control that the user has not used or patronised.
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(2) No operator of a port may wilfully or recklessly represent that the port is an approved place of first arrival for any craft other than craft specified in the approval.

(3) No operator may wilfully or recklessly represent that the port is an approved place of first arrival where no approval has been given or an approval has been suspended or revoked.

37D Director-General to consult chief executives

The Director-General must not take any action under sections 37, 37A, or 37B without consulting the chief executives of—
(a) the New Zealand Customs Service; and
(b) the Ministry of Health; and
(c) the New Zealand Police; and
(d) the Ministry of Transport; and
(e) every other department of State whose operations may, in the Director-General’s opinion, be affected by the action.

38 Importers’ records

Every person who by way of commerce imports or causes to be imported any risk goods shall keep at that person’s place of business, or at some other approved place in New Zealand, such records in respect of those goods, in such manner, and for such period of time, as may be prescribed.

39 Approval of transitional facilities and containment facilities

(1) The Director-General may, after consulting with the persons that the Director-General considers to be representative of the classes of persons likely to have an interest in the proposed standard, approve standards for building, maintaining, or operating transitional facilities.

(2) Any person may apply in an approved form to the Director-General for the approval of any place as a transitional facility or a containment facility.

(2A) The Director-General must consider every application for approval of a place as a containment facility made under subsection (2) and,—
(a) if the application complies with the requirements of this Act; and
(b) if the place meets the relevant standards approved by the Authority in accordance with the Hazardous Substances and New Organisms Act 1996,—
the Director-General may approve the place as a containment facility.

(3) The Director-General must consider every application for approval of a place as a transitional facility made under subsection (2) and,—
(a) if the application complies with the requirements of this Act; and
(b) if the place meets the relevant standards approved under subsection (1),—
the Director-General may approve the place as a transitional facility for the purpose specified in the approval.
(4) A transitional facility approval given in accordance with this section must, where the approval specifies, expire at a time specified in the approval or upon the occurrence of an event specified in the approval.

(5) A transitional facility approval given in accordance with this section may specify the uncleared goods that may be held in the facility.

(6) A containment facility approval given in accordance with this section may specify the organisms that may be held in the facility.

(7) The Director-General may, by written notice to the operator of a transitional facility, or a containment facility, cancel an approval for a transitional facility, or a containment facility, or a part of an approval relating to 1 or more uses of a transitional facility, where—

(a) the facility no longer complies with the relevant standards; or

(b) the Director-General is satisfied that the facility is no longer used for the purpose or 1 or more of the purposes specified in the approval.

(8) In exercising a power under subsection (7), the Director-General must observe the rules of natural justice.

(9) The Director-General may, if he or she thinks fit and without an application from any person, declare specified parts of ports approved as places of first arrival to be transitional facilities.

40 Approval of facility operators

(1) Any person may apply, in an approved form, to the Director-General for approval as the operator of a specified transitional facility or specified containment facility.

(2) Every application must be accompanied by such further information as the Director-General may require.

(3) The Director-General must consider every application made under subsection (1) and, if satisfied—

(a) that the applicant is a fit and proper person to be the operator of the transitional facility or containment facility specified in the application; and

(b) the applicant is able to comply with the operating standards for that facility,—

may approve the applicant as the operator of that facility.

(4) The Director-General may, by written notice to a person, cancel that person’s approval to operate a specified transitional facility or a specified containment facility where—

(a) the person is no longer operating the facility in compliance with the operating standards for the facility; or

(b) the person has ceased to act as operator of the facility; or
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(c) the person is no longer a fit and proper person to operate the facility.

(5) In exercising a power under subsection (4), the Director-General must observe the rules of natural justice.

(6) No person may operate or purport to operate a transitional facility or a containment facility unless the person is approved as an operator of that facility.

41 Designation of quarantine area
(1) The Director-General may by notice in the Gazette designate any place to be a quarantine area, and may at any time revoke or vary such a designation.

(2) An inspector may, by the display of a clearly visible notice within a biosecurity control area, designate any place within that biosecurity control area to be a quarantine area.

(3) A designation under subsection (2) shall ordinarily expire after 48 hours, or when sooner revoked; but it may be extended once by an inspector for a further period of not more than 48 hours.

(4) Every quarantine area shall be under the direct control of an inspector.

(5) No person shall, knowing that an area is a quarantine area, enter, leave, or use the area for any purpose, without the permission of the inspector who has control of the area.

Part 4
Surveillance and prevention
42 Purpose of Part 4
The purpose of this Part is to provide for the continuous monitoring of New Zealand’s status in regard to pests and unwanted organisms—
(a) to facilitate the provision of assurances and certificates in relation to exports of organisms and their products; and
(b) as a basis for the proper administration of this Act, including the institution of precautionary actions, emergency and exigency arrangements, and pest management strategies; and
(c) to monitor the effect of pest management strategies; and
(d) otherwise to enable any of New Zealand’s international reporting obligations and trading requirements to be met.

43 Duty to provide information
(1) For the purposes of this Part, an inspector or authorised person may require any person referred to in subsection (2)—
(a) to provide any information held by the person concerning pests, pest agents, unwanted organisms, or risk goods that the inspector or authorised person believes on reasonable grounds is necessary to ascertain the presence or distribution in New Zealand of pests, pest agents, or unwanted organisms (or pests or unwanted organisms of a particular kind or description); and
(b) to provide such assistance as the inspector or authorised person reasonably requests to enable or facilitate the
acquisition, collection, and recording of any such information ascertained.

(2) The persons referred to for the purposes of subsection (1) are—

(a) every person who owns, manages, or otherwise controls the means by which and the sources from which information required under subsection (1) may be generated; and

(b) every person who owns, manages, or otherwise controls any organism, organic material, or risk goods that may be monitored for the purposes of this Part.

44 General duty to inform

(1) Every person is under a duty to inform the Ministry, as soon as practicable in the circumstances, of the presence of what appears to be an organism not normally seen or otherwise

(2) The duty to inform does not apply in relation to an organism that is seen or otherwise detected in a place where it may lawfully be present in accordance with an approval given under the Hazardous Substances and New Organisms Act 1996.

45 Notifiable organisms

(1) [Repealed]

(2) The Governor-General may, by Order in Council, declare any organism to be a notifiable organism.

(3) The Governor-General may, by Order in Council, made on the recommendation of the responsible Minister, declare any pest to which a regional pest management strategy relates to be an organism notifiable within the region, or within any specified part of the region, of the regional council or regional councils concerned.

(4) The responsible Minister shall not recommend the making of an order under subsection (3), unless—

(a) the regional council or regional councils concerned have asked the Minister to do so; and

(b) the Minister is satisfied that it is in the public interest to do so.

(5) The responsible Minister must not recommend the making of an order under subsection (2) in respect of any organism which has been approved for release in New Zealand by the Authority in accordance with the Hazardous Substances and New Organisms Act 1996 unless that Minister has first consulted with the Authority.

46 Duty to report notifiable organisms

(1) Every person who—

(a) at any time suspects the presence of an organism in any place in New Zealand; and

(b) suspects that it is for the time being declared to be a notifiable organism under subsection (2) of section 45; and

(c) believes that it is not at the time established in that place; and

(d) has no reasonable grounds for believing that the chief technical officer is aware of its
(2) Every person who—

(a) at any time suspects the presence of an organism in a place in the region, or in any part of the region, of a regional council; and

(b) suspects that it is for the time being declared to be an organism notifiable within the region or part under subsection (3) of section 45; and

(c) believes that it is not at that time established in that place; and

(d) has no reasonable grounds for believing that the chief technical officer is aware of its presence or possible presence in that place at that time,—

shall without unreasonable delay report to the chief technical officer its presence or possible presence in that place at that time.

(1A) A chief technical officer may, by notice in writing, require any person who has expertise or knowledge in an area of biological science to supply the chief technical officer with information held by that person on the incidence, prevalence, or distribution of specified organisms.

(2) Except in relation to circumstances concerning which a regulation makes contrary provision, the reasonable expenses of a person who supplies information to a chief technical officer in response to a requirement under this section will be reimbursed out of money appropriated by Parliament for the purpose if those expenses would not have been incurred but for the requirement.

47 Imported risk goods [Repealed]

48 Power to require information

(1) A chief technical officer may, by notice in writing, require the person in charge of premises used for investigating organisms or organic material, or any person employed in a professional or technical capacity in any area of biological science, to—

(a) supply the chief technical officer with information held by that person on the incidence, prevalence, or distribution of specified organisms; or

(b) permit the chief technical officer, or a person authorised in writing by that officer, to have access to, inspect, and test or sample specimens of any organism or tissues or parts of an organism or organic material held by that person or on those premises.

(1A) A chief technical officer may, by notice in writing, require any person who has expertise or knowledge in an area of biological science to supply the chief technical officer with information held by that person on the incidence, prevalence, or distribution of specified organisms.

(2) Except in relation to circumstances concerning which a regulation makes contrary provision, the reasonable expenses of a person who supplies information to a chief technical officer in response to a requirement under this section will be reimbursed out of money appropriated by Parliament for the purpose if those expenses would not have been incurred but for the requirement.

49 Use of information

Any information acquired by a chief technical officer under this Part may be published for the purpose of communicating the animal or plant health status of New Zealand, or the occurrence (in New Zealand or overseas) of pests or unwanted organisms.

50 Identification systems
(1) The Director-General may, from time to time, approve systems administered by specified persons for the purpose of enabling the identification of organisms and their products and associated premises.

(2) The Director-General may approve identification systems under this section for any of the following purposes:
   (a) facilitating pest management:
   (b) marking the presence or absence in organisms of particular qualities relating to the purposes of this Act:
   (c) meeting the certification requirements of overseas authorities in respect of New Zealand exports.

(3) When considering the approval of an identification system under this section, the Director-General shall ensure that the identifications to be used—
   (a) provide unique, clear, and lasting identification having regard to the purpose for which the identifications are needed; and
   (b) do not create confusion with any other generally used system of identification.

(4) Regulations made under this Act may require persons of any kind or description to use one or more identification systems approved under this section and notified in the Gazette in accordance with subsection (5).

(5) The Director-General may, by notice in the Gazette, specify the identification systems that may be used to comply with regulations made under this Act; and must keep, and make publicly available, a register of all Gazette notices made under this section.

51 Duties relating to identification of organisms

(1) No person shall remove, alter, or deface any approved identification that has been used in relation to an organism except with the written permission of an inspector or with reasonable excuse.

(2) No person shall knowingly use in relation to any organism—
   (a) an identification forming part of an approved identification system that the person is not entitled to use in relation to that organism; or
   (b) any mark that is likely to be mistaken for or confused with an identification forming part of an approved identification system.

(3) No person required by regulations made under this Act to use one of any 1 or more identification systems notified in the Gazette shall fail to do so.

52 Communication of pest or unwanted organism

No person shall knowingly communicate, cause to be communicated, release, or cause to be released, or otherwise spread any pest or unwanted organism except—

(a) in the course of and in accordance with a pest management strategy; or
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(b) as provided in an emergency regulation made under section 150; or

(c) for a scientific purpose carried out with the authority of the Minister.

(d) as permitted either generally or specifically by a chief technical officer.

53 Duties of owners of organisms

(1) Subject to subsection (2), the owner or person in charge of an organism which that person knows or suspects constitutes, contains, or harbours a pest or unwanted organism must not—

(a) cause or permit that organism to be in a place where organisms are offered for sale or are exhibited; or

(b) sell or offer that organism for sale; or

(c) propagate, breed, or multiply the pest or unwanted organism or otherwise act in such a manner as is likely to encourage or cause the propagation, breeding, or multiplication of the pest or unwanted organism.

(2) A chief technical officer may permit an owner or person in charge of an organism to carry out an act otherwise prohibited by this section.

(3) Permission given under this section must be given either by notice in the Gazette or in writing to the owner or person in charge of an organism.

Part 5 Pest management

54 Purpose of Part 5

The purpose of this Part is to provide for the effective management or eradication of pests and unwanted organisms.

55 Powers for purpose of pest management strategy and small-scale management programme

(1) The management or eradication of pests must be in accordance with pest management strategies made in accordance with this Part.

(2) Every pest management strategy or notice declaring a small-scale management programme must specify which of the powers in Part 6 may be exercised in the implementation of that strategy or programme and only those powers may be used to implement the strategy or programme.

(3) Where any provision in Part 6 confers a power on a management agency, that power may be exercised by a management agency only if it is acting in the implementation of a pest management strategy for which it is the management agency, and that strategy specifies the power as one which may be exercised to implement the strategy.

(4) An authorised person may exercise a power conferred on an authorised person by Part 6 to implement a pest management strategy or small-scale management programme only if the strategy or notice declaring the programme specifies the power as one which may be exercised to implement the strategy or programme and that authorised person was appointed for
National pest management strategies

56 Preparation of national pest management strategy

A Minister or any person may prepare a proposal for a national pest management strategy.

57 Notification of proposal by Minister

(1) A Minister may notify, in accordance with section 62, a proposal for a national pest management strategy only if the Minister is of the opinion that—

(a) the benefits of having a pest management strategy or strategies in relation to each organism to which the strategy would apply outweigh the costs, after taking account of the likely consequences of inaction or alternative courses of action; and

(b) the net benefits of national intervention exceed the net benefits of regional intervention; and

(ba) where funding proposals for the strategy require persons to meet directly the costs of implementing the strategy,—

(i) the benefits that will accrue to those persons as a group will outweigh the costs; or

(ii) those persons contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the strategy; and

(c) each organism in respect of which the strategy is under consideration is capable of causing at some time a serious adverse and unintended effect in relation to New Zealand on 1 or more of the following:

(i) economic well-being; or

(ii) the viability of threatened species of organisms, the survival and distribution of indigenous plants or animals, or the sustainability of natural and developed ecosystems, ecological processes, and biological diversity; or

(iii) soil resources or water quality; or

(iv) human health or enjoyment of the recreational value of the natural environment; or

(v) the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga; and

(d) the implementation of the proposed strategy would not be contrary to New Zealand’s international obligations.

(2) In addition to the requirements in subsection (1), a Minister may notify, in accordance with section 62, a proposal for a national pest management strategy only if the Minister is of the opinion that each organism in respect of which the strategy is under consideration—

(a) is not known to be established in New Zealand, but if the organism were so established, it would have the potential to cause significant economic loss or environmental degradation, or both, and it
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could be eradicated or effectively managed; or

(b) is of restricted distribution or abundance, or restricted distribution and abundance, in New Zealand, but the organism has the potential to cause significant economic loss or environmental degradation, or both, and it could be eradicated or effectively managed; or

(c) is of widespread distribution in all or part of New Zealand and—

(i) effective action in respect of the organism would be impracticable without a national strategy; and

(ii) the potential economic, social, or environmental damage or loss of not taking action on a national basis would be significant.

58 Request to notify national proposal

(1) Any person may, by notice in writing to a Minister whose responsibilities might be adversely affected by an organism, request that Minister to notify in accordance with section 62 a proposal for a national pest management strategy in relation to that organism.

(2) Where a Minister is requested to notify a proposal in accordance with this section, the Minister must do so unless section 59 applies, and if,—

(a) in the Minister’s opinion, the proposal complies with section 57; and

(b) in the Minister’s opinion, the person making the request has consulted with persons likely to be affected by the strategy, or representatives of persons likely to be affected by the strategy.

(3) Where a proposal is notified after a request made in accordance with this section, the Minister may, if he or she thinks fit, require the person who has given notice in writing to pay all or part of the costs of processing the proposal in accordance with sections 62 to 69, and the strategy may be processed only to the extent that the person meets his or her share of the costs.

59 Minister may refuse to notify suggested strategy in certain circumstances

The Minister may refuse to notify a proposal under section 62, if satisfied on reasonable grounds that—

(a) it does not comply with this Part; or

(b) it has not been described clearly enough to be readily understood; or

(c) [Repealed]

(d) both—

(i) at a time within the 3 years before the proposal was submitted to the Minister, a board of inquiry completed an inquiry under this Part into a proposal whose substance was broadly the same as its substance; and

(ii) there is not available any significant evidence relating to it that was not available at that time; or

(e) it has little or no merit in relation to the management or eradication of the organism to which it relates; or

(f) it is frivolous or vexatious.
60 Preparation and contents of proposal for national pest management strategy

A proposal for a national pest management strategy must specify the following matters:

(a) the proposer of the strategy:
(b) the organism or organisms to which the strategy is to apply and any other organisms intended to be controlled:
(c) in relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the reasons for the strategy including a description of the adverse effects of the organism, or the class or description of organism:
(d) the management agency that is to be responsible for implementing the strategy:
(e) the proposed period for which the strategy will remain in force:
(f) in relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the objectives of the strategy and the principal measures proposed to be taken to achieve those objectives:
(g) any alternative measures that it would be reasonable to take to achieve the objectives of the strategy, and the reasons for preferring the measures specified in accordance with paragraph (f) as the measures proposed to be taken:
(h) the intended scope and purpose of each proposed strategy rule, and the rules for which it is proposed that a breach of the rule will be an offence under this Act:
(i) whether any land will include portions of adjoining road for the purposes of the strategy in accordance with section 6, and if so, the portions of road that are proposed to be included:
(j) the actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga:
(k) the actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on—
   (i) the environment; and
   (ii) the marketing overseas of New Zealand products:
(l) an analysis of the benefits and costs of the strategy in relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, and the reasons why a national strategy is more appropriate than a regional strategy or regional strategies:
(m) the anticipated costs of implementing the strategy, how those costs are to be funded, and the funding information required to be included by section 61:
(n) the basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the implementation of the strategy, and information concerning the disposal of the proceeds of any receipts arising in the course of implementing the strategy:
(o) the powers to be used in accordance with section 55 to implement the strategy:
(p) where the proposed strategy would affect another pest management strategy, the proposed means of co-ordination:
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(q) the proposed means for measuring the extent to which the objectives of the strategy are being achieved:

(r) the actions (including the making of contributions towards the costs of implementation) that it is proposed may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.

61 Funding information required in proposal

A proposal for a national pest management strategy must specify, in relation to each organism to which the strategy would apply, or in relation to each class or description of organism to which the strategy would apply, the following matters:

(a) the extent to which any persons, or persons of any class, kind, or description are likely to benefit from the strategy:

(b) the extent (if any) to which any persons, or persons of any class, kind, or description by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the pest management strategy:

(c) the rationale for the proposed allocation of costs, including, where it is proposed that the strategy should be funded by a levy in accordance with sections 90 to 96,—

(i) the matters required to be specified in accordance with section 93(1); and

(ii) how the proposed levy will comply with section 92(1)(d), (e), (f), and (g):

(d) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons who are to be required to pay.

62 Notification of proposed national pest management strategy

(1) The Minister shall publicly notify a proposed national pest management strategy by—

(a) publishing a notice in the Gazette; and

(aa) publishing a notice in 1 or more daily newspapers circulating in the major metropolitan areas; and

(b) giving such other notification as the Minister considers appropriate having regard to the nature and distribution of the organism concerned and the persons (including regional councils) likely to have an interest in the proposal; and

(c) if the responsible Minister is not the proposer of the strategy, sending a copy to the responsible Minister for co-ordination purposes.

(2) Every notice under this section must include—

(a) a description of the proposed strategy:

(b) a statement that submissions on the proposed strategy may be made in writing to the Minister by any person:

(c) a closing date for submissions (which must not be earlier than 20 working days after notification under this section):

(d) a statement that every submission should state—

(i) those aspects of the proposed strategy that the submission supports; and
(ii) those aspects of the proposed strategy that the submission opposes; and

(iii) the reasons for the support and opposition identified; and

(iv) any specific alternatives to the proposed strategy that the person making the submission wishes to recommend; and

(v) whether the person making the submission wishes to be heard in respect of that submission if an inquiry is held:

(e) a list of the places where a copy of the proposal for the strategy may be obtained or inspected:

(f) an address for submissions.

(3) Any person may make a submission to the Minister about a proposed national pest management strategy notified in accordance with this section, and every submission must contain the matters specified in subsection (2)(d).

63 Board of inquiry

(1) The Minister must appoint a board of inquiry to inquire into and report on every proposal for a pest management strategy notified in accordance with section 62, unless, after having regard to the submissions made to the Minister, the Minister is satisfied that there is no significant body of persons who—

(a) would be affected by the implementation of the proposed strategy; and

(b) are opposed to a significant element of the proposed strategy.

(2) A board of inquiry shall—

(a) comprise not fewer than 3 and not more than 5 members; and

(b) have a presiding member appointed either by the Minister or, if the Minister declines to do so, by the members.

(2A) Where the Minister appoints a board of inquiry in accordance with subsection (1), the Minister must forward all submissions received under section 62 to that board.

(3) Every board of inquiry shall be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951 and there may, if the Minister so directs, be paid to any member of the board of inquiry, out of money appropriated by Parliament for the purpose,—

(a) remuneration by way of fees, salary, or allowances in accordance with the Act; and

(b) travelling allowances and travelling expenses in accordance with that Act in respect of time spent travelling in the service of the board of inquiry,—

and the provisions of that Act apply accordingly.

64 Public notification of inquiry

[Repealed]

65 Submissions to the board of inquiry

[Repealed]
66 Summary of submissions, notification and conduct of hearing

Schedule 2 shall apply in respect of an inquiry by a board of inquiry into a proposed national pest management strategy; and the proposer of the strategy and every person who made a submission under section 62 shall have the right to be heard at any such inquiry.

67 Matters to be considered and board of inquiry’s report

(1) In considering a proposed national pest management strategy, a board of inquiry shall have regard to—
   (a) all submissions; and
   (b) all relevant provisions of this Part; and
   (c) any other matters it thinks fit.

(2) On completion of its inquiry, the board of inquiry shall prepare a written report on the proposed national pest management strategy and the matters raised by the inquiry, and shall make such recommendations to the Minister as it determines are appropriate in the circumstances.

(3) After receiving a report from a board of inquiry, the Minister shall ensure that—
   (a) a copy of the report is sent to every person who made a submission to the board of inquiry and to every other person the Minister considers appropriate having regard to the nature and distribution of the organism concerned; and
   (b) the report is published; and
   (c) public notice is given of where and how copies of the report can be obtained.

68 Making of national pest management strategy

(1) Subject to section 69, the Governor-General may, by Order in Council made on the recommendation of a Minister, make a national pest management strategy.

(2) The Order in Council made under this section must include all the matters required in a national pest management strategy by section 69A.

(3) The strategy rules in an order made under this section are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989.

69 Duties of Ministers in relation to proposed national pest management strategies

(1) The Minister shall not recommend the making of an order under section 68 making a national pest management strategy—
   (a) where the Minister has appointed a board of inquiry to inquire into and report on the proposed strategy, without considering—
      (i) the report, and any recommendations, of the board; and
      (ii) a report on that report, any such recommendations, and the strategy itself, made to the Minister by the appropriate chief executive:
(b) in any other case, without considering a report on the strategy made to the Minister by the appropriate chief executive.

(1A) Where the proposed strategy has not been considered by a board of inquiry, the Minister must not recommend the making of a strategy if that strategy differs significantly in its effect from the relevant provisions in the proposal notified in accordance with section 62.

(2) The Minister shall not recommend the making of an order under section 68 making a national pest management strategy unless satisfied, on reasonable grounds,—

(a) of the matters specified in section 57(1); and

(b) that there is likely to be adequate funding for the implementation of the strategy for its proposed duration or 5 years (whichever is the shorter); and

(c) [Repealed]

69A Contents of national pest management strategy

A national pest management strategy must specify the following matters:

(a) the pest or pests to be managed or eradicated:

(b) the objectives of the strategy, and a general description of the principal measures to be taken to implement the strategy:

(c) the management agency that is responsible for implementing the strategy:

(d) the period for which the strategy will remain in force:

(e) the powers to be used in accordance with section 55 to implement the strategy:

(f) the strategy rules, if any, made in accordance with this Act:

(g) the portions of road, if any, that are included as adjoining land, in accordance with section 6, for the purposes of the strategy:

(h) the basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the strategy:

(i) the sources of funding for the implementation of the strategy, and the limitations, if any, on how the funds collected from those sources may be used to implement the strategy:

(j) the actions (including the making of contributions towards the costs of implementation) that may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.

69B Strategy rules

(1) A national pest management strategy made by Order in Council under section 68, may include rules made for all or any of the following purposes:

(a) requiring any person to take specified actions which will enable the management agency to determine or monitor the presence or distribution of the pest or any pest agent:

(b) requiring any person to keep records of actions taken in accordance with rules made under this section and to send specified information based on those records to the management agency:
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(c) requiring the identification of specified goods:

(d) prohibiting or regulating specified methods that may be used in the management of the pest:

(e) prohibiting or regulating activities which may affect measures taken to implement the strategy:

(f) requiring audits or inspections of specified actions:

(g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:

(h) requiring the occupier of any place to take specified actions to control or eradicate the pest or a specified pest agent on that place:

(i) requiring the occupier of any place to take specified actions to control or eradicate the habitat of the pest or the habitat of a specified pest agent on that place:

(j) prohibiting or regulating specified activities by the occupier of a place where those activities will promote the habitat of the pest on that place:

(k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on that place:

(l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:

(m) requiring the occupier of any place to carry out specified treatments or procedures to assist in preventing the spread of the pest:

(n) requiring the owners or persons in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:

(o) requiring the destruction of goods in circumstances where the goods may contain or harbour the pest, or otherwise pose a risk of spreading the pest:

(p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:

(q) prohibiting or regulating the holding or disposal of organic material:

(r) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:

(s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.

(2) A Minister must not recommend the making of an Order in Council under section 68 unless the Minister has had regard to—

(a) the extent to which each rule included in the strategy is likely to assist in achieving the objectives of the strategy; and

(b) the extent to which each rule included in the strategy is likely to restrict the rights of individuals.

(3) A rule may specify that a breach of the rule creates an offence under section 154(q).

(4) A rule may provide that no exemptions from any requirement of the rule may be granted under section 69D.
(5) A rule may—
(a) apply generally throughout New Zealand or within a specified part or parts of New Zealand:
(b) apply generally or with respect to different classes of persons, places, goods, or other things:
(c) apply generally or at any specified time of each year.

(6) Where a rule applies to a specified part or parts of New Zealand, other rules relating to the same subject matter may be made for other specified parts of New Zealand.

(7) So far as the bylaws of any local authority are inconsistent with or repugnant to any rule made under this Act in force in the same locality, the bylaws must be construed subject to the rules.

69C Incorporation by reference

(1) Any written material or document that, in the opinion of the Minister, is too large or otherwise impractical to be printed as part of a rule included in a pest management strategy may be incorporated by reference.

(2) Any material incorporated by reference under this section is deemed for all purposes to form part of the rule, but any amendment to the material by the person or organisation originating it does not come into force as a rule until a rule to that effect has been made under this Act.

(3) All material incorporated by reference under this section must be available at the office of the management agency for that strategy and copies of that material must be available for purchase for a reasonable charge.

69D Exemption power of Minister

(1) The Minister may, upon such conditions as he or she considers appropriate, exempt any person from any requirement in any rule included in a national pest management strategy made under this Act.

(2) Before granting an exemption under this section, the Minister must be satisfied in the circumstances of each case that—
(a) the requirement has been substantially complied with and that further compliance is unnecessary; or
(b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
(c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
(d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,— and that the granting of the exemption will not significantly prejudice the attainment of the objectives of the strategy.

(3) The Minister may, upon such conditions as he or she thinks fit, exempt all persons, or any specified class of persons, persons in any specified place, or persons responsible
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for specified goods or things from any requirement in any rule included in a national pest management strategy made under this Act, if the Minister is satisfied that events have occurred that make the prescribed requirements unnecessary or inappropriate.

(4) The number and nature of exemptions granted under this section must be notified as soon as practicable in the Gazette.

(5) Nothing in this section applies in any case where any rule specifically provides that no exemptions are to be granted.

70 Orders to be laid before House of Representatives

As soon as is practicable after an order has been made under section 68, the Minister who recommended its making shall lay a copy before the House of Representatives.

Regional pest management strategies

71 Preparation of regional pest management strategy

A regional council or any other person may prepare a proposal for a regional pest management strategy.

72 Notification of proposal by regional council

(1) A regional council may notify, in accordance with section 78, a proposal for a regional pest management strategy only if it is of the opinion that—

(a) the benefits of having a regional pest management strategy in relation to each organism to which the strategy would apply outweigh the costs, after taking account of the likely consequences of inaction or alternative courses of action; and

(b) the net benefits of regional intervention exceed the net benefits of an individual’s intervention; and

(ba) where funding proposals for the strategy require persons to meet directly the costs of implementing the strategy—

(i) the benefits that will accrue to those persons as a group will outweigh the costs; or

(ii) those persons contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the strategy; and

(c) each organism in respect of which the strategy is under consideration is capable of causing at some time a serious adverse and unintended effect in relation to the region on 1 or more of the following:

(i) economic well-being; or

(ii) the viability of threatened species of organisms, the survival and distribution of indigenous plants or animals, or the sustainability of natural and developed ecosystems, ecological processes, and biological diversity; or

(iii) soil resources or water quality; or

(iv) human health or enjoyment of the recreational value of the natural environment; or

(v) the relationship of Maori and their culture and traditions with
their ancestral lands, waters, sites, waahi tapu, and taonga.

(2) [Repealed]

(3) [Repealed]

73 Consultation

(1) During the preparation of a proposed regional pest management strategy, a regional council shall consult—
(a) those Ministers whose responsibilities may be affected by the strategy; and
(b) local authorities that may be so affected; and
(c) the tangata whenua of the area who may be so affected, through iwi authorities and tribal runanga.

(2) A regional council may consult any other person during the preparation of a proposed regional pest management strategy.

74 Request to notify regional proposal

(1) Any person may, by notice in writing to a regional council, request that council to notify a proposal for a regional pest management strategy under section 78.

(2) Where a regional council is requested to notify a proposal in accordance with this section, the council must do so unless section 75 applies, and if,—
(a) in the opinion of the council, the proposal complies with the provisions of section 72; and
(b) in the council’s opinion, the person making the request has consulted with persons likely to be affected by the strategy, or representatives of persons likely to be affected by the strategy.

(3) Where a proposal is notified after a request made in accordance with this section, the regional council may, if it thinks fit, require the person who has given notice in writing to pay all or part of the costs of processing the proposal in accordance with sections 78 to 79F, and the strategy may be processed only to the extent that the person meets his or her share of the costs.

75 Council may refuse to notify suggested strategy in certain circumstances

A regional council may refuse to notify a proposal for a strategy under section 78, if satisfied on reasonable grounds that—
(a) it does not comply with this Part; or
(b) it has not been described clearly enough to be readily understood; or
(c) [Repealed]
(d) both—
(i) at a time within the 3 years before the proposal for the strategy was submitted to the council, an inquiry was completed into a proposal for a regional pest management strategy whose substance was broadly the same as its substance; and
(ii) there is not available any significant evidence relating to it that was not available at that time; or
(e) it has little or no merit in relation to the management or eradication of the organism to which it relates; or
(f) it is frivolous or vexatious.
76 Preparation and contents of proposal for regional pest management strategy

(1) A proposal for a regional pest management strategy must specify the following matters:

(a) the proposer of the strategy;

(b) the organism or organisms to which the strategy is to apply and any other organisms intended to be controlled:

(c) in relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the reasons for the strategy, including a description of the adverse effects of the organism, or the class or description of organism:

(d) the management agency that is to be responsible for implementing the strategy:

(e) the proposed period for which the strategy will remain in force:

(f) in relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the objectives of the strategy and the principal measures proposed to be taken to achieve those objectives:

(g) any alternative measures that it would be reasonable to take to achieve the objectives of the strategy and the reasons for preferring the measures specified in accordance with paragraph (f) as the measures proposed to be taken:

(h) each proposed strategy rule, an explanation of each proposed rule, and, if it is proposed that a breach of the rule will be an offence under this Act, a statement to that effect:

(i) whether land will include portions of adjoining road for the purposes of the strategy in accordance with section 6, and if so, the portions of road that are proposed to be included:

(j) the actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga:

(k) the actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on—

(i) the environment; and

(ii) the marketing overseas of New Zealand products:

(l) an analysis of the benefits and costs of the strategy (including the reasons why the strategy is more appropriate than relying on the voluntary actions of persons) in relation to each organism to which the strategy would apply:

(m) the anticipated costs of implementing the strategy, how those costs are to be funded, and the funding information required to be included by section 77:

(n) the basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the implementation of the strategy, and information concerning the disposal of the proceeds of any receipts arising in the course of implementing the strategy:

(o) the powers to be used in accordance with section 55 to implement the strategy:
(p) where the proposed strategy would affect another pest management strategy, the proposed means of co-ordination:

(q) the proposed means for measuring the extent to which the objectives of the strategy are being achieved:

(r) the actions (including the making of contributions towards the costs of implementation) that it is proposed may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.

(2) [Repealed]

(3) A proposal for a regional pest management strategy may provide that the regional council shall itself be the management agency for the strategy, or may specify a department, body, or other authority as the management agency.

(4) A proposal for a regional pest management strategy shall not be inconsistent with—

(a) any national or regional pest management strategy (whether relating to the same region or any other region or regions) concerning the same organism; or

(b) any regulation; or

(c) any regional policy statement or regional plan prepared under the Resource Management Act 1991.

77 Funding information required in proposal

A proposal for a regional pest management strategy must specify, in relation to each organism or in relation to each class or description of organism to which the strategy would apply, the following matters:

(a) the extent to which any persons or persons of any class, kind, or description are likely to benefit from the strategy:

(b) the extent (if any) to which any persons or persons of any class, kind, or description by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the pest management strategy:

(c) the rationale for the proposed allocation of costs, including, where it is proposed that the strategy should be funded by a levy in accordance with sections 90 to 96,—

(i) the matters required to be specified in accordance with section 93(1); and

(ii) how the proposed levy will comply with section 92(1)(d), (e), (f), and (g):

(d) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons who are to be required to pay.

78 Notification of proposed regional pest management strategy

(1) A regional council must publicly notify a proposed regional pest management strategy—

(a) by publishing a notice in 1 or more daily newspapers circulating within the council’s region; and

(b) by giving such further notice, if any, as the regional council considers appropriate having regard to the nature and distribution
(2) Every notice under this section must include—

(a) a description of the proposed strategy:

(b) a statement that submissions on the proposed strategy may be made in writing to the regional council by any person:

(c) a closing date for submissions (which must not be earlier than 20 working days after notification under this section):

(d) a statement that every submission should state—

(i) those aspects of the proposed strategy that the submission supports; and

(ii) those aspects of the proposed strategy that the submission opposes; and

(iii) the reasons for the support and opposition identified; and

(iv) any specific alternatives to the proposed strategy that the person making the submission wishes to recommend; and

(v) whether the person making the submission wishes to be heard in respect of that submission:

(e) a list of the places where a copy of the proposed strategy may be obtained or inspected:

(f) an address for submissions.

(2A) Any person may make a submission to the regional council about a proposed regional pest management strategy notified in accordance with this section, and every submission must contain the matters specified in subsection (2)(d).

(3) A regional council shall provide 1 copy of a proposed pest management strategy without charge to—

(a) the responsible Minister and every other Minister whose responsibilities may be affected by the strategy; and

(b) all territorial authorities in the region and adjacent local authorities that may be so affected; and

(c) the tangata whenua of the area that may be so affected, through iwi authorities and tribal runanga.

(4) A regional council shall make a proposed regional pest management strategy that it has notified available in every place in its region that it considers appropriate, having regard to the nature and distribution of the organism concerned and the persons likely to have an interest in the proposal.

79 Hearings commissioners

(1) A regional council may appoint a hearings commissioner to inquire into and report on a proposal for a regional pest management strategy it has notified.

(2) The council shall pay the hearings commissioner—

(a) remuneration by way of fees, salary, or allowances; and

(b) travelling allowances and travelling expenses in respect of time spent travelling for the purposes of the inquiry,—

as the council agrees with the commissioner.
79A Summary of submission, notification, and conduct of hearing

Every proposal for a regional pest management strategy must be subject to an inquiry, Schedule 2 applies in respect of that inquiry as though the inquiry were undertaken by a board of inquiry, and every person who made a submission on that proposed regional pest management strategy has the right to be heard at the inquiry.

79B Regional matters to be considered and regional council’s report

(1) In considering a proposed regional pest management strategy, a regional council—

(a) must have regard to—

(i) all submissions; and
(ii) all relevant provisions of this Part; and
(iii) a report on the proposed regional pest management strategy made to it by its principal officer; and
(iv) any report and any recommendations of a hearings commissioner; and

(b) where the strategy includes provision for funding, the strategy in accordance with section 97 must have regard to—

(i) the extent to which the proposal for the pest management strategy gave notice of the intention to provide in the strategy for wholly or partially funding the strategy in accordance with section 97; and
(ii) the extent of consultation with the ratepayers for the rating units on which the rate or rates are likely to be assessed and the views of those ratepayers; and
(iii) all views expressed to the regional council by any other person concerning the proposal to fund the strategy in accordance with section 97; and
(iv) all other relevant matters known to the council; and

(c) must be satisfied on reasonable grounds of the matters in section 72(1).

(2) On completion of its consideration, the council must prepare a written report on the proposed regional pest management strategy and the matters raised by the submissions, and must give its decision which must include the regional pest management strategy and the reasons for accepting or rejecting any submissions or group of submissions.

(3) The decision of the regional council may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

(4) The regional council must give public notice of the decision and the pest management strategy.

79C Notification of decision

At the same time as a regional council gives public notice of its decision, it must serve on every person who made a submission on a provision, a copy of its decision on that provision.
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79D Reference of decision on submissions to Environment Court

(1) Any person who made a submission on a proposed regional pest management strategy may refer to the Environment Court—

(a) any provision included in the proposed regional pest management strategy, or a provision which the decision on submissions proposes to include in the regional pest management strategy; or

(b) any matter excluded from the proposed regional pest management strategy, or a provision which the decision on submissions proposes to exclude from the regional pest management strategy,—

if that person referred to that provision or matter in that person’s submission on the proposed regional pest management strategy.

(2) Any reference to the Environment Court under this section must be lodged with the Environment Court within 15 working days of service of the decision of the regional council and must state—

(a) the reasons for the reference and relief sought; and

(b) the address for service of the person who made the reference; and

(c) any other matters required by regulations.

(3) A person who makes a reference to the Environment Court under this section must serve a copy of the notice within 5 working days after the reference is lodged with the Environment Court, on—

(a) the regional council; and

(b) every person who made a submission on that provision or matter.

79E Hearing by Environment Court

(1) The Environment Court must hold a public hearing into any provision or matter referred to it.

(2) Where the Environment Court holds a hearing into any provision or matter of a proposed regional pest management strategy, that reference is an appeal and the Environment Court may confirm, or direct the regional council to modify, delete, or insert, any provision or matter which is referred to it.

79F Final consideration of regional pest management strategy

(1) A regional council must make a regional pest management strategy once it has made the amendments as directed by the Environment Court.

(2) A strategy must be made under this section by affixing the seal of the regional council to the document.

(3) The regional council must provide 1 copy of each regional pest management strategy made by the council to every public library in its area.

80 Regional pest management strategy to be processed like national pest management strategy [Repealed]
80A Contents of regional pest management strategy

A regional pest management strategy must specify the following matters:

(a) the pest or pests to be managed or eradicated:

(b) the objectives of the strategy, and a general description of the principal measures to be taken to implement the strategy:

(c) the management agency that is responsible for implementing the strategy:

(d) the period for which the strategy will remain in force:

(e) the powers to be used in accordance with section 55 to implement the strategy:

(f) the strategy rules, if any, made in accordance with this Act:

(g) the portions of road, if any, that are included as adjoining land, in accordance with section 6, for the purposes of the strategy:

(h) the basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the strategy:

(i) the sources of funding for the implementation of the strategy, and the limitations, if any, on how the funds collected from those sources may be used to implement the strategy:

(j) the actions (including the making of contributions towards the costs of implementation) that may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.

80B Strategy rules

(1) A pest management strategy made under section 79F may include rules for all or any of the following purposes:

(a) requiring any person to take specified actions which will enable the management agency to determine or monitor the presence or distribution of the pest or any pest agent:

(b) requiring any person to keep records of actions taken in accordance with rules made under this section and to send specified information based on those records to the management agency:

(c) requiring the identification of specified goods:

(d) prohibiting or regulating specified methods that may be used in the management of the pest:

(e) prohibiting or regulating activities which may affect measures taken to implement the strategy:

(f) requiring audits or inspections of specified actions:

(g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:

(h) requiring the occupier of any place to take specified actions to control or eradicate the pest or a specified pest agent on that place:

(i) requiring the occupier of any place to take specified actions to control or eradicate the habitat of the pest or the habitat of a specified pest agent on that place:

(j) prohibiting or regulating specified activities by the occupier of a place where
those activities will promote the habitat of the pest on that place:

(k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on that place:

(l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:

(m) requiring the occupier of any place to carry out specified treatments or procedures to assist in preventing the spread of the pest:

(n) requiring the owners or persons in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:

(o) requiring the destruction of goods in circumstances where the goods may contain or harbour the pest, or otherwise pose a risk of spreading the pest:

(p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:

(q) prohibiting or regulating the holding or disposal of organic material:

(r) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:

(s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.

(2) A rule may provide that no exemptions from any requirement of the rule may be granted under section 80D.

(3) A rule may—

(a) apply generally throughout the region or within a specified part or parts of the region:

(b) apply generally or with respect to different classes of persons, places, goods, or other things:

(c) apply generally or at any specified time of each year.

(4) Where a rule applies to a specified part or parts of the region, other rules relating to the same subject matter may be made for other specified parts of the region.

(5) So far as the bylaws of the regional council or a territorial authority are inconsistent with or repugnant to any rule made under this Act in force in the same locality, the bylaws must be construed subject to the rules.

(6) In the event of an inconsistency between regulations made under this or any other Act or the rules in a national pest management strategy, and the rules in a regional pest management strategy, the regulations or rules in a national pest management strategy prevail.

(7) A rule may specify that a breach of the rule creates an offence under section 154(r).
(8) Notwithstanding any rule of law to the contrary, a strategy rule may not be declared invalid for unreasonableness.

80C Incorporation by reference

(1) Any written material or document that, in the opinion of the regional council, is too large or otherwise impractical to be printed as part of a rule included in a pest management strategy may be incorporated by reference.

(2) Any material incorporated by reference under this section is deemed for all purposes to form part of the rule but any amendment to the material by the person or organisation originating it does not come into force as a rule until a rule to that effect has been made under this Act.

(3) All material incorporated by reference under this section must be available at the office of the management agency for that strategy, and copies of that material must be available for purchase for a reasonable charge.

80D Exemption power of regional council

(1) The regional council may, if the regional council considers it appropriate and upon such conditions as the regional council considers appropriate, exempt any person from any specified requirement in any rule included in a regional pest management strategy in accordance with this Act.

(2) Before granting an exemption under this section, the regional council must be satisfied in the circumstances of each case that—

(a) the requirement has been substantially complied with and that further compliance is unnecessary; or

(b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or

(c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,—

and that the granting of the exemption will not significantly prejudice the attainment of the objectives of the strategy.

(3) The regional council may, upon such conditions as it thinks fit, exempt all persons or any specified class of persons, persons in any specified place, or persons responsible for specified goods or things, from any requirement in any rule included in a regional pest management strategy made under this Act if the regional council is satisfied that events have occurred that make the prescribed requirements unnecessary or inappropriate.

(4) The number and nature of exemptions granted under this section must be recorded by the regional council in a register; and the register must be available for public inspection during the normal office hours of the regional council.
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(5) Nothing in this section applies in any case where any rule specifically provides that no exemptions are to be granted.

81 Implementation of regional pest management strategy

Except as otherwise provided in this Act, the Local Government Act 2002 shall apply to the implementation of a regional pest management strategy by a regional council.

82 Powers that may not be delegated

A regional council is not capable of delegating (whether under clause 32 of Schedule 7 of the Local Government Act 2002 or any other provision of that Act or any other Act)—

(a) the power to appoint a hearings commissioner to inquire into and report on a proposal for a regional pest management strategy it has notified; or

(b) the power to make, review, amend, or revoke a regional pest management strategy; or

(c) the power to declare a small-scale management programme under section 100

(d) except as provided in paragraphs (a) to (c),—

(i) this Act shall have effect; and

(ii) if it is to be implemented by 2 or more councils, the extent (if any) to which those councils are to be empowered to implement it outside their own regions; and

(b) the strategy shall not have effect unless made by all the councils; and

(c) subject to subsection (2), if the strategy is made, it shall have effect, and this Act shall have effect in relation to it,—

(i) in the case of a strategy to be implemented by 1 council only, as if the regions of the councils are a single region, whose council that 1 council is; and

(ii) In the case of a strategy to be administered by 2 or more councils, as if each of those councils, and the principal officer of each of those councils, is, to the extent specified in the strategy, capable of exercising in the region of another of the councils that jointly proposed it the powers that would be exercisable under or in respect of the strategy if it were a strategy to be implemented by that council only; and

83 Councils may act jointly

(1) Any 2 or more regional councils may separately notify and make a joint regional pest management strategy; and in that case,—

(a) the strategy shall indicate—

(i) whether it is to be implemented by all the councils, some of them only, or only 1 of them; and

(ii) if it is to be implemented by 2 or more councils, the extent (if any) to which those councils are to be empowered to implement it outside their own regions; and

(b) the strategy shall not have effect unless made by all the councils; and

(c) subject to subsection (2), if the strategy is made, it shall have effect, and this Act shall have effect in relation to it,—

(i) in the case of a strategy to be implemented by 1 council only, as if the regions of the councils are a single region, whose council that 1 council is; and

(ii) In the case of a strategy to be administered by 2 or more councils, as if each of those councils, and the principal officer of each of those councils, is, to the extent specified in the strategy, capable of exercising in the region of another of the councils that jointly proposed it the powers that would be exercisable under or in respect of the strategy if it were a strategy to be implemented by that council only; and

(d) except as provided in paragraphs (a) to (c),—

(i) this Act shall have effect; and

(ii) if made, the strategy shall be implemented,—

accordingly.

(2) Nothing in subsection (1)(c) limits or affects the powers of a regional council in relation to the amendment or revocation of a regional pest management strategy.
National and regional pest management strategies

84 Management agencies

(1) Every pest management strategy shall specify the management agency that is to have responsibility for implementation of the strategy.

(2) A management agency may be a department, a regional council, a territorial authority, or a body corporate.

(3) In determining who shall be the management agency for a pest management strategy, the Minister or regional council, as the case may be, shall take into consideration—

(a) the need for accountability to those persons who will provide the funds to implement the strategy; and

(b) the acceptability of the agency to those persons who will provide the funds to implement the strategy and those who will be subject to management provisions under the strategy; and

(c) the capacity of the agency, including the competence and expertise of its employees and contractors available to it, to manage the strategy.

(4) If a management agency for a pest management strategy resigns by notice in writing to the Minister or regional council, or goes into liquidation, or ceases to exist, the Minister or regional council, as the case may be, may, without following the required procedure for amending the strategy, appoint some other qualified body to be the management agency for that strategy and shall publicly notify any such appointment.

85 Operational plans

(1) The management agency for every pest management strategy shall—

(a) within 3 months after the strategy is made, prepare an operational plan for its implementation; and

(b) review the operational plan annually, and, if the agency thinks fit, amend it; and

(c) prepare a report on the operational plan and its implementation not later than 5 months after the end of each financial year; and

(d) make copies of the operational plan and report on its implementation available to the public at cost.

(2) The report required by subsection (1)(c) to be prepared in respect of an operational plan may form part of a regional council’s annual report; but in that case—

(a) the council may make it available to the public by supplying only an extract from the annual report; and

(b) whatever form it may be made available in, the council shall charge the public no more than the cost of supplying such an extract.

(3) The management agency for a pest management strategy shall supply copies of every operational plan prepared under subsection
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(1)(a), every operational plan amended under subsection (1)(b), and every report prepared under subsection (1)(c), to—

(a) the responsible Minister; and

(b) in the case of a national pest management strategy, the Minister who recommended the Order in Council making the pest management strategy; and

(c) in the case of a regional pest management strategy, every regional council that made it.

(4) The Minister who recommended the making of the Order in Council making the strategy (in the case of a national pest management strategy) and the regional council that made the strategy (in the case of a regional pest management strategy) may,—

(a) at any time before being notified under subsection (3) of the preparation or amendment of an operational plan; or

(b) not later than 20 working days after being so notified,—

give the management agency written notice that the Minister or the regional council (as the case may be) intends to disallow the plan or any part of the plan on the grounds that the Minister or the regional council believes that the plan or that part of the plan is inconsistent with the strategy.

(5) Unless the Minister or regional council later gives the management agency concerned written notice that the Minister or regional council is now prepared to allow the plan, or a part of a plan, in respect of which the Minister or the regional council gave the agency notice under subsection (4), the plan or part of a plan is of no effect.

86 Compensation

(1) A pest management strategy shall not provide for or permit the payment of compensation to a person—

(a) in respect of income derived from feral or wild organisms and adversely affected by the implementation of the strategy; or

(b) who fails to comply with the strategy; or

(c) in respect of loss suffered before the time when an inspector or authorised person establishes the presence of the pest on the premises of the person.

(2) A pest management strategy may provide for or permit the payment of compensation to a person who at the time an organism is declared to be a pest is deriving income from domesticated organisms of the species whose feral or wild population is a pest and whose organisms are necessarily destroyed in the course of implementing the strategy.

(3) Subject to subsection (4), where—

(a) any person owns domesticated organisms—

(i) that are infected by a pest to which a pest management strategy relates; or

(ii) that are pest agents in relation to such a pest; or

(iii) whose feral or wild population is such a pest; and

(b) any of those organisms are necessarily destroyed in the course of implementing the strategy; and
(c) there are net proceeds available from the disposal of the organisms destroyed,—subsection (4) applies to those net proceeds.

(4) Net proceeds to which this subsection applies—

(a) if the pest management strategy concerned does not provide for the payment of compensation to the owner of organisms destroyed, shall be paid to the owner:

(b) if the compensation payable to the owner under the strategy is less than those proceeds, shall be paid to the owner instead of compensation:

(c) except as provided in paragraphs (a) and (b), shall be retained by the management agency concerned.

(5) Any dispute concerning the eligibility for or amount of compensation shall be submitted to arbitration.

87 Crown obligations

(1) A national pest management strategy shall impose obligations and costs on the Crown according to its tenor.

(2) The Governor-General may, by Order in Council, approve the application of a regional pest management strategy or any part of it to the Crown; and—

(a) except to the extent that such an order so provides, the strategy shall not have the effect of imposing costs or obligations on the Crown; and

(b) where a strategy has been amended, it shall not have the effect of imposing costs or obligations on the Crown in addition to those previously provided for except to the extent that a further such order so provides.

88 Duration and review of pest management strategies

(1) In this section, a reference to the Minister or regional council is a reference to the Minister or regional council, as the case may require, who notified the proposal for the pest management strategy.

(2) A pest management strategy ceases to have effect—

(a) when the Minister or regional council declares by public notice that the purpose of the strategy has been achieved; or

(b) after the expiry of the period specified in the strategy; or

(c) when, following a review carried out in accordance with this section, the strategy is revoked,— whichever event occurs first.

(3) The Minister or a regional council may review a pest management strategy in accordance with this section at any time—

(a) if the Minister or regional council has reason to believe that the strategy is failing to achieve its purposes; or

(b) if the Minister or regional council has reason to believe that relevant circumstances have changed to a significant extent since the strategy commenced; or
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(c) if the strategy is due to expire in less than 12 months and—

(i) any person requests the Minister or regional council to notify a proposal to extend the duration of the strategy; or

(ii) the Minister or regional council proposes to extend the duration of the strategy—and may, following the review, amend or revoke the strategy in accordance with this section, or leave the strategy unchanged.

(4) Where the review of a pest management strategy has commenced in accordance with this section and that strategy would otherwise expire in accordance with the terms of the strategy during the review, that strategy continues in force until amended or revoked on completion of the review, including the completion of any rights of appeal.

(5) Where any person requests the Minister or regional council to notify a proposal to extend the duration of a strategy in accordance with subsection (3)(c)(i)—

(a) the Minister or regional council may refuse to notify a proposal if the provisions of sections 59 or 75 (as the case may be) apply:

(b) the review may be processed only so far as the costs of the review are met by that person.

(6) Where a pest management strategy has been in force for 5 years or more and it is more than 5 years since the strategy has been reviewed in accordance with this section, the Minister or regional council must proceed to review the strategy in accordance with this section and may, following the review, amend or revoke the strategy in accordance with this section, or leave the strategy unchanged; and this review is a cost of the strategy.

(7) A review of a national pest management strategy is commenced by a proposal notified in accordance with section 62 and the provisions of sections 63 to 70 apply to that review with any necessary modifications.

(8) A review of a regional pest management strategy is commenced by a proposal notified in accordance with section 78 and the provisions of sections 79 to 83 apply to that review with any necessary modifications.

(9) A proposal must state whether it is proposed that the strategy be amended or revoked or left unchanged, the proposed amendments, if any, in full, and the reasons for the proposed result of the review.

(10) Every notification of a proposal for a review must—

(a) describe the proposed result of the review; and

(b) state where the proposal can be inspected; and

(c) include a statement that submissions on the proposal may be made in writing by any person to the Minister or regional council, as the case may be; and
(d) include a closing date for submissions (which is not earlier than 20 working days after public notice of the proposal is given); and

(e) include a statement that every submission should state whether the person making the submission wishes to be heard in respect of that submission if an inquiry is held.

(11) On completion of the review the Governor-General may, by Order in Council made on the recommendation of a Minister, amend or revoke a national pest management strategy; and in that event the Minister must present a copy of the order, and where appropriate the strategy as amended, to the House of Representatives.

(12) An order made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

(13) On completion of the review a regional council may, by affixing the common seal of the council, amend or revoke a regional pest management strategy.

(14) The regional council must provide 1 copy of each amended regional pest management strategy made by the regional council to every public library in its area.

88A Minor changes to strategy

(1) Subject to subsection (4), a national pest management strategy may be amended from time to time, on the recommendation of the Minister, by the Governor-General by Order in Council without a review of the strategy under section 88.

(2) An order made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

(3) Subject to subsection (4), a regional pest management strategy may be amended from time to time by a regional council by resolution without a review of the strategy in accordance with section 88.

(4) A strategy may be amended in accordance with this section only if the Minister or regional council is satisfied that the amendment will not have any significant effect on the rights and obligations (including obligations to contribute to the costs of the strategy) of any person.

(5) In this section, a reference to the Minister or regional council is a reference to the Minister or regional council, as the case may require, who notified the proposal for the pest management strategy.

89 Strategy may relate to several pests

A pest management strategy may relate to 2 or more pests, and may provide for differing action to be taken in respect of different pests.

Funding of strategies

90 Strategy may impose levy
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(1) Subject to section 92, the Governor-General may, by Order in Council made on the recommendation of a Minister, impose a levy payable to a management agency for the purposes of wholly or partially funding the implementation of a pest management strategy.

(2) Every order under subsection (1) shall be deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

91 Orders to be confirmed

(1) Where in any year an order under section 90(1) has been made on or after 1 January and before 1 July, and—
(a) has not been revoked with effect on or before 1 July in the next year; and
(b) has not ceased, and will not cease, to have effect on or before 1 July in the next year by virtue of the Regulations (Disallowance) Act 1989,—
it shall be deemed to have been revoked with the close of 30 June in that next year unless it has been confirmed by an Act of Parliament passed on or before that day.

(2) Where in any year an order under section 90(1) has been made after 30 June and on or before 31 December, and—
(a) has not been revoked with effect on or before 1 January in the next year; and
(b) has not ceased, and will not cease, to have effect on or before 1 January in the next year by virtue of the Regulations (Disallowance) Act 1989,—
it shall be deemed to have been revoked with the close of 31 December in the year after the year in which it was made, unless it has been confirmed by an Act of Parliament passed on or before that day.

92 Restrictions on levies

(1) A Minister shall not recommend the making of an order under section 90(1) in respect of the management agency under any pest management strategy unless the Minister is satisfied, on the basis of information and evidence that the Minister regards as satisfactory, that—
(a) persons likely to be affected by the payment or collection of the levy have been consulted; and
(b) persons opposing the levy’s imposition have had a reasonable opportunity to put their views to the Minister; and
(c) all views put to the Minister about the proposed imposition of the levy have been given due regard; and
(d) the imposition of the levy is the most appropriate means of funding the pest management strategy, or the part of the strategy concerned, having regard to the extent to which the levy would target—
(i) persons likely to benefit from the implementation of the strategy; and
(ii) persons who by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the strategy; and
(e) [Repealed]
(f) [Repealed]
(g) [Repealed]
(h) if the levy is imposed on quantities of a commodity imported into New Zealand, its imposition will not constitute a non-tariff barrier and will not be contrary to New Zealand’s international legal obligations; and

(i) the management agency will have in place adequate systems of accounting to persons who will be responsible for paying the levy; and

(j) all other relevant matters known to the Minister have been properly considered.

93 Contents of levy provisions in strategy

(1) Every order under section 90 providing for the imposition of a levy payable to a management agency for the purposes of the strategy shall specify—

(a) the persons responsible for paying the levy; and

(b) the basis on which the amount of levy is to be calculated or ascertained; and

(c) the persons (if any) to be exempt from paying the levy; and

(d) the persons responsible for collecting the levy from those responsible for paying it; and

(e) how the management agency is to spend the levy and consult with those persons responsible for paying the levy; and

(f) when and how the levy is to be paid; and

(g) whether the levy is to be paid at a single rate or 2 or more different rates; and if at different rates, the places, goods, or other things to which the different rates may apply; and

(h) in respect of each rate of levy, the maximum rate of levy; and

(ha) how the management agency is to set the actual rate or rates of levy; and

(i) how the rates of the levy and variations of rates are to be notified; and

(j) whether or not the persons collecting the levy are entitled to recover the cost of levy collection and the estimated amount.

(2) An order under section 90 providing for the imposition of a levy may prescribe any of the following matters:

(a) the making of returns to the management agency or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:

(b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of any levy:

(c) the payment of additional or increased levy when amounts of levy otherwise payable have been paid late, paid in part, or not paid at all.

(d) the holding of funds from which payments of levy are to be made, on trust in separate accounts.

(e) a method of paying the levy that may be used by persons who object on conscientious or religious grounds to paying the levy in the manner otherwise provided in the order.

93A Trust accounts for levy money payable to management agency

(1) Where an order under section 90 provides that funds from which payments of levy are made are to be held on trust in separate accounts, the persons responsible
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for collecting the levy must each keep a
bank account (in this section referred to as a
trust account) at a registered bank within
the meaning of the Reserve Bank of New
Zealand Act 1989; and

(a) ensure that the account is so named as
to identify that it is a trust account kept by
the person responsible for collecting the
levy for the purposes of the order; and

(b) take all practicable steps to ensure that—

(i) the account is used only for
holding amounts required to be
deposited by subsection (3); and

(ii) the balance in the account on
any day is not less than the amount
outstanding to the management
agency on that day by the person
responsible for collecting the levy.

(2) For the purpose of this section, the
amount outstanding to the management
agency by a person responsible for
collecting the levy on any day is the
remainder obtained by subtracting—

(a) the total of all amounts of levy paid by
that person to the management agency
before that day calculated on the basis
specified in the order under section 90; from

(b) the total of all amounts required by
subsection (3) to be deposited in the trust
account by the person responsible for
collecting the levy not later than a day
before that day.

(3) Where a person is responsible for
collecting a levy that person must deposit
an amount equal to the levy calculated on
the basis provided for in the order under

section 90 in the trust account on the day or
days specified in that order or on a day or
days calculated in accordance with that
order.

(4) There is deemed to be held on trust for
the management agency as levy money—

(a) the amount outstanding to the
management agency by the person
responsible for collecting the levy held in
the trust account specified in the order
under section 90; or

(b) where the amount held in the account is
less than the amount outstanding, all the
money in the account.

(5) Money deemed by subsection (4) to be
held on trust—

(a) is not available for the payment of; and

(b) is not liable to be attached or taken in
execution at the instance of—
any creditor of the person responsible for
collecting the levy (other than the
management agency).

(6) A person who ceases to be a person
responsible for collecting a levy must
continue to maintain the trust account
referred to in this section until all the levy
money payable to the management agency
in respect of the period during which that
person was responsible for collecting the
levy has been paid.

(7) Nothing in subsection (6) limits or affects
any obligation or liability under this Act of
any person who has become responsible for
collecting the levy.
94 Effect of levy
Where a levy is imposed under this Part, the following provisions apply:

(a) every person responsible for paying the levy to the management agency shall do so; and

(b) the management agency may recover the levy from any person responsible for paying it as a debt due in a court of competent jurisdiction.

(c) the levy may be spent by the management agency only for those purposes set out in the levy order made under section 90.

95 Financial provisions
(1) As soon as practicable after the end of a financial year during which a levy has been paid to a management agency under a pest management strategy, the management agency shall prepare in respect of the year—

(a) statements (relating only to money paid to the agency as levy, and assets acquired or built up with or out of, or by virtue of spending, money paid under the levy) of the management agency’s financial position at the end of the year; and

(b) statements of the management agency’s receipt and expenditure of money paid as levy under the strategy; and

(c) all other statements necessary to show fully—

(i) the agency’s financial position as required by this section; and

(ii) the financial results of all of the management agency’s activities involving the use of the money paid to the agency as levy, or the use of assets acquired or built up with or out of, or by virtue of spending, money paid as levy.

(2) A management agency shall ensure that the statements required to be prepared by subsection (1) are audited within 5 months of the end of the year.

95A Orders to provide for statements, accounts, and records to be kept
For the purpose of ascertaining whether or not an order under section 90 is being complied with, the order must provide for—

(a) the keeping of statements, accounts, and records of specified classes or descriptions by the management agency, persons responsible for collecting the levy, and persons responsible for paying the levy concerned, or any of them; and

(b) any such statements, accounts, or records to be retained for a specified period.

95B Compliance audits
(1) While an order under section 90 is in force, the Minister who recommended its making may, at the request of the management agency, appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:

(a) some or all of the persons responsible for collecting the levy;

(b) some or all of the persons responsible for paying the levy.
(2) While an order under section 90 is in force, the Minister who recommended its making may, if an arbitrator has been appointed to resolve a dispute, appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.

(3) No person is qualified for appointment as an auditor unless the person is a chartered accountant (within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996) or a member, fellow, or associate of an association of accountants constituted in some part of the Commonwealth outside New Zealand, and for the time being approved for the purpose of the audit of company financial statements by the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Companies Act 1993, by notice published in the Gazette.

(4) No officer or employee of any of the following persons or organisations may be appointed an auditor:

(a) any management agency:

(b) any person responsible for collecting the levy under the order concerned:

(c) any person responsible for paying the levy under the order concerned.

(5) Every person appointed as an auditor is entitled to remuneration (paid by the management agency concerned) as provided in the relevant levy order.

(6) For the purposes of sections 95C and 95D, auditor means a person for the time being appointed under subsection (1) or subsection (2).

95C Purpose of compliance audits

(1) The purpose of an audit conducted by an auditor appointed under section 95B(1) is (so far as is practicable) to ascertain in respect of the affairs of the persons whose affairs are to be audited, and report to the Minister responsible for the pest management strategy, on as many of the following matters as are relevant to those affairs:

(a) the extent to which persons responsible for paying the levy concerned are doing and have done so:

(b) the extent to which appropriate amounts of the levy concerned are being and have been paid:

(c) the extent to which appropriate amounts of the levy concerned are being and have been collected:

(d) the extent to which appropriate amounts of the levy concerned are being and have been paid over to the management agency by persons collecting it:

(e) the extent to which statements, accounts, and records are being and have been kept:

(f) the extent to which statements, accounts, and records that are being and have been kept are being and have been properly kept.

(2) The purpose of an audit conducted by an auditor appointed under section 95B(2) is
(so far as is practicable) to ascertain in respect of the affairs of the parties to the dispute, and report to
the arbitrator concerned, the Minister responsible for the pest management strategy, and those parties, on the matters of fact that are in dispute.

95D Power of auditors to require production of statements, accounts, and records
(1) For the purposes of conducting an audit, any auditor specifically or generally authorised in writing in that behalf by a Minister may from time to time require any person (being a management agency, a person responsible for collecting levies, a person responsible for paying levies, or any employee or officer of a management agency or of any such person) to produce for inspection within a reasonable period specified by the auditor any statements, accounts, and records in the possession or under the control of that person (being statements, accounts, or records that are required to be kept under this Act or by an order), and may take copies of or extracts from any such document.

(2) Every authorisation under subsection (1) must contain—
(a) a reference to this section; and
(b) the full name of the auditor; and
(c) a statement of the powers conferred on the auditor by subsection (1).

(3) Subject to section 95C(2), except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no auditor who exercises powers under this section may disclose to any other person (other than a Minister or a person authorised in that behalf by a Minister) any information obtained by the auditor as a result of the exercise of the power.

(4) Notwithstanding subsection (3), the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to this section.

96 Resolution of disputes
Every order under section 90 that provides for the imposition of a levy shall provide for—
(a) the appointment of arbitrators to resolve disputes as to—
   (i) whether or not any person is required to pay the levy; or
   (ii) the amount of levy any person is required to pay; and
(b) the procedures to be followed by arbitrators; and
(c) remuneration of arbitrators; and
(d) the payment of arbitration costs; and
(e) a right of appeal to a District Court Judge against decisions of arbitrators; and
(f) any other matters relating to the resolution of such disputes.

97 Regional strategy to be funded by rates
(1) To the extent only that a regional pest management strategy provides for that
strategy to be wholly or partially funded from the proceeds of a rate, the strategy may be funded—

(a) from the proceeds of a general rate set and assessed under the Local Government (Rating) Act 2002; or

(b) from the proceeds of a targeted rate set and assessed under that Act; or

(c) partly from the proceeds of the general rate and targeted rate.

(2) In determining—

(a) the extent (if any) to which it should fund a regional pest management strategy from the proceeds of a general rate; or

(b) the extent (if any) to which it should fund a regional pest management strategy from the proceeds of a targeted rate; or

(c) how to set and assess a works and services rate from the proceeds of which a regional pest management strategy is to be funded,—

a regional council shall have regard to—

(d) the extent to which the strategy or the part of the strategy to be funded from the proceeds of the rate relates to the interests of the occupiers of properties on which the rate is to be levied:

(e) the extent to which direct or indirect benefits from the expenditure of the rate (or that portion of the rate that is to be used to fund the strategy) are likely to accrue to the occupiers of the properties on which the rate is to be levied:

(f) the collective benefits from the strategy to the occupiers of the properties on which the rate is to be levied relative to the collective costs to them of the payment of the rate or that portion of the rate that is to be used to fund the strategy:

(g) the extent to which the characteristics of the properties on which the rate is to be levied and the uses to which they are put contribute to the presence or prevalence of the pest or pests concerned.

97A Approval of regional pest management strategy [Repealed]

98 Contents of rating provisions in strategy [Repealed]

99 Making and levying of rates [Repealed]

99A Funding powers of regional councils for national pest management strategies

The powers of a regional council under the Local Government (Rating) Act 2002 to set and assess rates for the purpose of exercising any of the powers conferred on it by this Act in relation to national pest management strategies, or for the purpose of exercising any of the powers conferred on it by section 13(1)(f) or section 100 of this Act, are not limited or affected by—

(a) section 97; or

(b) section 6 of the Biosecurity Amendment Act 1994.

99B Limitation on expenditure

A management agency must not spend funds to meet the costs of implementing a pest management strategy in contravention
Management of unwanted organisms present on small scale

100 Regional council may without pest management strategy undertake small-scale management of unwanted organisms

(1) If satisfied that—

(a) an unwanted organism that is present in the region could cause serious adverse and unintended effects unless early action to control it is taken; and

(b) the organism can be eradicated or controlled effectively by small-scale measures within 3 years of commencing measures to control the organism, because—

(i) distribution of the organism is limited; and

(ii) technical means to control the organism are available; and

(c) the taking of all the measures (including the payment of any amount to a person for the purpose of compensating that person for a loss) is likely to cost less than an amount for the time being prescribed for the purposes of this section by the Governor-General by Order in Council; and

(d) the taking of those measures is unlikely to result in significant monetary loss to any person, other than a person who has contributed to the presence or spread of the organism by failing to comply with this Act or any pest management strategy,—

a regional council may, by giving such public notice as the regional council thinks fit having regard to the distribution of the unwanted organism and the persons likely to be affected by the measures taken, declare a small-scale management programme.

(2) Every public notice declaring a small-scale management programme must specify—

(a) the unwanted organism that is the subject of the small-scale management programme; and

(b) the objectives of the small-scale management programme; and

(c) the powers to be exercised in accordance with section 55 to implement the small-scale management programme.

(3) Before any powers to enter a place and carry out work are exercised in accordance with a small-scale management programme, a notice specifying the matters in subsection (2) and the work to be carried out on the place must be given to the occupier of the place not less than 5 working days before the work is carried out.

(4) Subsection (3) does not apply where the regional council is satisfied that there are reasonable grounds to believe that the unwanted organism may spread beyond the place before the expiry of 5 working days.

(5) A small-scale management programme ceases to have effect—

(a) when the regional council declares by public notice that the programme is failing to control the organism; or
(b) when the regional council declares by public notice that the organism has been eradicated or brought under control; or

(c) after the expiry of 5 years from the declaration of the programme.

100A Exercise of powers in respect of unwanted organism

(1) The powers under Part 6 in relation to an unwanted organism may be exercised by—
(a) the Director-General:
(b) a chief technical officer appointed by the Director-General, or the chief executive of any department:
(c) an inspector or authorised person appointed under section 103(1)(a):
(d) an inspector or authorised person appointed under section 103(2)(a).

(2) Where a small-scale management programme has been declared under section 100 by a regional council in respect of an organism, that declaration does not prevent the exercise of Part 6 powers by the persons specified in subsection (1) in relation to that organism.

Part 6
Administrative provisions
Appointments and delegations

101 Chief technical officers

(1) The Director-General shall appoint chief technical officers for the purposes of this Act, being in each case a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the Director-General to that person.

(2) The chief executive of a department recognised by the responsible Minister as having responsibilities for natural and physical resources or human health that could be adversely affected by an organism may appoint chief technical officers for the purposes of this Act, being in each case a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the chief executive to that person.

(2A) A person appointed as a chief technical officer must be employed under the State Sector Act 1988.

(3) A chief technical officer appointed under subsection (2) may exercise all the powers and perform all the functions and duties conferred on a chief technical officer by this Act except those powers conferred under sections 103(1), 116, 126, and 127.

(4) The chief executive (including the Director-General) may not delegate to any person the power to appoint chief technical officers.

102 Deputy chief technical officers

(1) The Director-General and the chief executive of any other department may appoint, in respect of any chief technical officer appointed by the Director-General or that chief executive, 1 or more deputy chief technical officers who must in each case be
a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the chief executive to that person.

(IA) A person appointed as a deputy chief technical officer must be employed under the State Sector Act 1988.

(2) Subject to the direction of the chief technical officer concerned, a deputy chief technical officer shall have and may exercise all of the powers, duties, and functions of a chief technical officer under this Act, including the power to appoint inspectors, authorised persons, and accredited persons.

(3) The chief executive (including the Director-General) may not delegate to any person the power to appoint deputy chief technical officers.

103 Inspectors, authorised persons, and accredited persons

(1) A chief technical officer appointed as such by the Director-General may from time to time—

(a) appoint inspectors and authorised persons for the purposes of administering and enforcing the provisions of this Act:

(b) appoint authorised persons for the purposes of a national pest management strategy.

(2) A chief technical officer appointed as such by the chief executive of a department may from time to time—

(a) appoint inspectors and authorised persons for the purposes of administering and enforcing all or any of the provisions of this Act except the provisions of Part 3:

(b) appoint authorised persons for the purposes of a national pest management strategy.

(3) The principal officer of a region may from time to time appoint authorised persons for the purpose of exercising functions, powers, and duties under this Act in relation to any regional pest management strategy in force in the region or any small-scale management programme declared by the council for that region, or to ascertain the presence or distribution of any pest, pest agent, or unwanted organism.

(4) A person shall not be appointed as an inspector or an authorised person unless the person has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to that person.

(5) Inspectors or authorised persons appointed under this section may, but need not, be persons who are employed under the State Sector Act 1988 or by a regional council.

(6) Inspectors and authorised persons may be authorised on their appointment to exercise all of the powers conferred on inspectors and authorised persons under this Act, or the regulations, or only such of those powers as are specified in their
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instruments of appointment or subsequently by written notice.

(7) A chief technical officer or the principal officer of a region may accredit persons (to be known as accredited persons) for the purposes of performing particular functions—

(a) that are consequential upon the exercise of powers under this Act by an inspector or authorised person; or

(b) that may be conferred on or may be performed by accredited persons under regulations made under this Act;—

but may not accredit a person for a particular function unless satisfied that the person has appropriate experience, technical competence, and qualifications relevant to the function.

(8) Every inspector, authorised person, and accredited person shall in the performance of functions, powers, and duties for the purposes of this Act use his or her best endeavours to comply with and give effect to any relevant performance or technical standards.

104 Authorised persons to comply with instructions

(1) All inspectors and authorised persons appointed by a chief technical officer must comply with any lawful direction or instruction given by a relevant chief technical officer in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on inspectors or authorised persons by this Act.

(2) All authorised persons appointed by a principal officer must comply with any lawful direction or instruction given by that officer in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on authorised persons by this Act.

(3) For the purposes of this section, relevant chief technical officer means any 1 or more of the chief technical officers appointed by the chief executive who appointed the chief technical officer responsible for the appointment of the inspector or authorised person.

105 Delegation to authorised persons

(1) A principal officer or chief technical officer may delegate to any person any of his or her functions, powers, or duties under this Act, except for—

(a) this power of delegation; and

(b) the power to appoint inspectors and authorised persons.

(2) Any delegation under this section may be made on such terms and conditions as the person delegating the power thinks fit, and may be revoked at any time by notice in writing to the delegate.

(3) Except as provided in the instrument of delegation, every person to whom a function, power, or duty has been delegated under this section may, without confirmation by the person delegating the function, power, or duty, exercise or perform the function, power, or duty in the same manner and with the same effect as
the person so delegating could himself or herself have exercised or performed it.

(4) Every person authorised to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

(5) A delegation under this section does not affect the performance or exercise of any function, power, or duty by the person on whom the function, power, or duty is conferred or imposed.

Administrative powers

106 Power to require assistance

(1) When it is necessary to do so, an inspector or authorised person may employ any person or request any person to assist that inspector or authorised person in carrying out the provisions of this Act, the regulations, and any directions or instructions issued by (as the case requires) the Director-General, a principal officer, or a chief technical officer under this Act.

(2) A person employed or requested to assist an inspector or authorised person has the same powers as that inspector or authorised person while that person is under the immediate direction and control of that inspector or authorised person.

107 Power of inspectors to detain people

(1) This subsection applies to—

(a) a person required by section 34(2) to go directly to a biosecurity control area and remain there for such reasonable time as an inspector may require to ascertain the presence of any risk goods, who—

(i) has disembarked from a craft on which the person arrived in New Zealand, and is not proceeding directly to a biosecurity control area; or

(ii) has gone to a biosecurity control area, but failed or refused to remain there for sufficient time to enable an inspector to ascertain the presence of any risk goods; and

(b) any person who is in a biosecurity control area.

(2) An inspector who suspects on reasonable grounds that a person to whom subsection (1) applies may be in possession of any uncleared risk goods may detain the person for any period (not exceeding 4 hours) that is reasonable in the circumstances, for search by a constable; and—

(a) where the person is moving, may use such force as is reasonably necessary to stop the person:

(b) where the person is not near a biosecurity control area, may use such force as is reasonably necessary to bring the person to the biosecurity control area:

(c) may use such force as is reasonably necessary to detain the person.

(3) An inspector who suspects on reasonable grounds that any person is in possession of unauthorised goods may detain the person for any period (not exceeding 4 hours) that is reasonable in the circumstances, for search by a constable,
108 Power to search people

(1) Subject to subsections (2) and (3), a constable who—

(a) suspects on reasonable grounds that a person to whom section 107(1) applies may be in possession of any uncleared risk goods; or

(b) has been told by an inspector, and believes, that the inspector suspects on reasonable grounds that a person—

(i) is a person to whom section 107(1) applies; and

(ii) may be in possession of any uncleared risk goods; or

(c) suspects on reasonable grounds that any person is in possession of any unauthorised goods; or

(d) has been told by an inspector, and believes, that the inspector suspects on reasonable grounds that any person is in possession of any unauthorised goods,—

may search the person, and take possession of any uncleared risk goods or unauthorised goods found.

(2) No constable shall search a person under the authority of subsection (1) without first—

(a) telling the person that he or she proposes to do so under the authority of that subsection; and

(b) telling the person that he or she is a constable; and

(c) if not in uniform, producing to the person evidence that he or she is a constable.

(3) Nothing in subsection (1) authorises any constable to conduct an internal search of any part of a person’s body.

(4) A constable who takes possession of any goods under subsection (1) shall give them into the custody of an inspector.

(5) Within 3 days of searching a person under the authority of subsection (1), a constable shall give the Commissioner of Police a written report on the search, and the circumstances in which it came to be conducted.

109 Power of inspection

(1) Subject to subsections (2) and (3),—

(a) an inspector may, at any reasonable time or times, enter and inspect any place for the purpose of confirming the presence, former presence, or absence of—

(i) any pest, pest agent, or unwanted organism; or

(ii) any unauthorised goods; or

(iii) any risk goods; or

(iv) [Repealed]

(b) an inspector or authorised person may, at any reasonable time or times, enter and inspect any place for the purpose of—

(i) confirming the presence, former presence, or absence, of any pest, pest agent, or unwanted organism; or
(ii) managing or eradicating any pest, pest agent, or unwanted organism:

(c) an inspector or authorised person may, at any reasonable time or times, enter and inspect any place for the purpose of determining whether or not any person is complying with this Act, the regulations, or any pest management strategy.

(2) An inspector or authorised person shall not enter and inspect a dwellinghouse, a marae, or a building associated with a marae, under subsection (1), except with—

(a) the consent of an occupier; or

(b) a warrant issued under section 110.

(3) Where a warrant under section 110 has been issued to an inspector or authorised person subject to conditions, the inspector or authorised person—

(a) shall not enter the dwellinghouse, marae, or building associated with a marae, specified in the warrant otherwise than in accordance with the conditions; and

(b) shall in all other respects comply with the conditions.

(4) Subject to subsection (3), an inspector or authorised person exercising the powers of entry and inspection conferred by subsection (1)(a) and (b) may use such force in going on, into, or under, the place concerned (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

110 Warrant to inspect dwellinghouse, marae, etc

(1) A District Court Judge, a Justice of the Peace, a Community Magistrate, or a Registrar (not being a constable) may, on the written application of an inspector or authorised person made on oath, issue a warrant in the prescribed form authorising the inspector or authorised person to enter and inspect the dwellinghouse, marae, or building associated with a marae specified in the application.

(2) Such a warrant may be issued only if the Judge, Justice, Magistrate, or Registrar is satisfied that there is reasonable ground for believing that—

(a) there is, on or in the place (being a dwellinghouse, marae, or building associated with a marae) specified in the application, any pest, pest agent, unwanted organism, unauthorised goods, or risk goods; or

(b) an activity that is regulated by or under the Act is being carried out on or in the place (being a dwellinghouse, marae, or building associated with a marae) specified in the application.

(3) Such a warrant—

(a) authorises the inspector or authorised person to enter and inspect the place concerned on 1 occasion within 14 days of the issue of the warrant; and

(b) may be unconditional or subject to conditions.

111 Entry in respect of offences
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(1) Subject to subsection (2), a District Court Judge, a Justice of the Peace, a Community Magistrate, or a Registrar (not being a constable), who, on the written application (made on oath) of an inspector or authorised person, is satisfied that there is reasonable ground for believing that there is on or in any place specified in the application any thing—

(a) in respect of which an offence against this Act punishable by imprisonment has been or may have been committed; or

(b) that is or may be evidence of the commission of an offence against this Act punishable by imprisonment; or

(c) that is intended to be used for the commission of an offence against this Act punishable by imprisonment,—

may issue, unconditionally or subject to conditions, a warrant (in the prescribed form) authorising the entry and search of the place, at any reasonable time on 1 occasion within 14 days of the issue of the warrant.

(2) The inspector or authorised person applying for a warrant under subsection (1)—

(a) shall first make reasonable inquiries as to whether any other applications for such a warrant (or a similar warrant under a provision of any enactment repealed by this Act) have been made in respect of the place concerned, and (if so) the following matters:

(i) the offence or offences alleged in respect of each application:

(ii) the result of each application; and

(b) shall disclose on the application for the warrant the results of the inquiries.

(3) Every warrant under subsection (1) shall be directed to and exercisable only by—

(a) a constable specified in the warrant; or

(b) an inspector or authorised person specified in the warrant, if accompanied by a constable; or

(c) any constable; or

(d) any inspector or authorised person, if accompanied by a constable.

(4) Where a warrant under subsection (1) has been issued subject to conditions, the person exercising it—

(a) shall not enter or search the place specified in it otherwise than in accordance with the conditions; and

(b) shall in all other respects comply with the conditions.

(5) Subject to subsection (4), a person exercising a warrant under subsection (1) may use such force in entering the place specified in it (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

112 Duties on exercising power of entry

(1) An inspector, authorised person, or constable, exercising a power of entry conferred by sections 30A, 109, 111, or 126—

(a) must have with him or her—

(i) evidence of his or her identity and appointment

as an inspector, authorised person, or constable; and

(i) evidence of his or her identity and appointment

as an inspector, authorised person, or constable; and

...
(ii) in the case of entry under section 109 to a place
that is a dwellinghouse, a marae, or a building
associated with a marae, the warrant under section
110 or in the case of entry under section 111,
the warrant authorising the entry; and
(b) must produce them to any person appearing to be in charge of the place entered—
   (i) on entering the place (if such a person is then
       present); and
   (ii) at any reasonable time thereafter, if asked to do so by the person; and
(c) if there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspector, authorised person, or constable leaves the place, must, as soon as is practicable upon leaving the place, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters:
   (i) the time and date of entry:
   (ii) the circumstances and purpose of entry:
   (iii) the name, office or position, and employer of every person entering:
   (iv) if entry was under warrant, the principal contents of the warrant:
   (v) every thing that has been seized, or that nothing has been seized, and every action taken, or that no action has been taken.

(2) An inspector, authorised person, or constable exercising a power of entry conferred by sections 30A, 109, 111, or 126 in relation to a marae or a building associated with a marae must have regard to the kawa of the marae.

113 Power to record information
A person lawfully exercising the powers conferred by section 109 or section 111 may make or take copies of any document or any information recorded or stored in a computer or other device,
and for that purpose may take possession of and remove any document, tape, or disc from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the inspector or authorised person to reproduce, in usable form information recorded or stored in a computer or other device.

114 General powers
An inspector or authorised person who has lawfully entered a place under section 109 or section 111 may do on or in respect of that place all such acts and things as appear to the inspector or authorised person to be necessary or expedient for eradicating or managing a pest or unwanted organism on the place or preventing the spread of a pest or unwanted organism from or to the place.

114A Application of articles or substances from aircraft
(1) A chief technical officer or principal officer may, by notice in writing, give approval for a specified person or any specified class of persons to apply any
(a) eradicating or managing any pest or unwanted organism; or

(b) ascertaining the presence or absence of any pest or unwanted organism.

(2) An approval given under subsection (1) may be given subject to any conditions that the chief technical officer or principal officer thinks fit.

(3) Any person specified in an approval or person of the class specified in an approval given in accordance with subsection (1) may, after public notice has been given in accordance with this section, act in accordance with that approval.

(4) Nothing in this section derogates from any provision of the Civil Aviation Act 1990 or any rule or regulation made under that Act.

(5) Subject to subsection (6), public notice for the purposes of this section is given by publishing, at least 2 weeks before the intended date when the article or substance is to be applied, in a newspaper circulating in the area in which the place is situated, a notice specifying the following information:

(a) the date on which, or as soon as practicable after which, it is intended to apply the article or substance:

(b) the article or substance to be applied:

(c) a clear description by reference to its boundaries (including districts, roads, and other commonly known features) of the place to which the article or substance is to be applied:

(d) the name and address of the person or body responsible for the application of the article or substance.

(6) If the chief technical officer is satisfied that compliance with the 2 weeks’ notice requirement under subsection (5) would significantly prejudice the chances of eradicating or containing an organism of a kind described in subsection (7),—

(a) the chief technical officer must notify the responsible Minister of that fact, and, unless the urgency of the situation makes it impracticable, obtain the approval of the Minister to a forgoing of the 2 weeks’ notice requirement; and

(b) the 2 weeks’ notice requirement does not then apply, but the chief technical officer must give as much public notice of the matters specified in subsection (5)(a) to (d) as is consistent with avoiding prejudice to the chances of eradicating or containing the organism; and

(c) the public notice may be given by whatever means the chief technical officer considers effective and appropriate to inform the persons who may be affected (including by radio or television announcement).

(7) The kinds of organism in respect of which shorter notification may be given under subsection (6) are organisms that—

(a) are not established or not known to be established in New Zealand, or are
established in New Zealand but restricted to certain parts of New Zealand; and (b) have the potential to cause all or any of the following if they become established in New Zealand, or established throughout New Zealand:

(i) significant economic loss:
(ii) significant adverse effects on human health:
(iii) significant environmental loss.

115 Use of dogs and devices
Any person lawfully exercising a power under any of sections 109, 111, 113, 114, or 120 may—
(a) be accompanied by a dog; or
(b) bring and use any thing,—
to assist in the exercise of the power.

116 Power to seize and dispose of unauthorised goods
(1) Any inspector lawfully exercising a power under any of sections 19(2), 30A, 31, 34(5), 109, 111, 113, 114, or 120 may seize—
(a) any unauthorised goods:
(b) any goods where an inspector has reasonable grounds to suspect—
   (i) those goods are in contact with, or have been in contact with, unauthorised goods; and
   (ii) pests or unwanted organisms could have been transmitted from the unauthorised goods to those goods.
(2) A chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, the treatment of, or any other dealing with, any goods seized in accordance with subsection (1); and any person may dispose of, treat, or otherwise deal with any such goods accordingly.
(3) A chief technical officer may offer the importer or owner of any goods imported into New Zealand and seized under subsection (1) the option of exporting or returning the goods to their place of origin provided that the importer or owner undertakes the payment of any costs associated with the export or return of the goods.
(4) A chief technical officer may permit goods seized under this section to be held in the custody of the Director-General for so long as is necessary for the importer to obtain a biosecurity clearance and in such a case the estimated costs and expenses of the custody and maintenance of the goods must be paid in advance to the Director-General.
(5) If an organism seized in accordance with subsection (1) is an endangered species, as defined in section 3 of the Trade in Endangered Species Act 1989, a chief technical officer must, after consulting the Director-General of Conservation concerning the disposal of the organism, dispose of it as he or she thinks fit.
(6) In exercising the powers of a chief technical officer in accordance with subsections (2), (3), and (4), a chief technical
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officer must, so far as is practicable while achieving the purpose of Part 3, act in a manner that is consistent with avoiding or minimising loss to the importer or owner of goods seized in accordance with subsection (1).

117 Expenses and compensation

(1) All costs and expenses attendant upon the custody and disposal of goods seized under section 116 and forfeited to the Crown shall be borne by the owner or any other person in possession of the goods immediately before seizure; and shall be recoverable from that person as a debt due to the Crown.

(2) If satisfied that the person in possession of any goods seized under section 116 was not aware that they were unauthorised goods, the Director-General may, at the Director-General’s absolute discretion waive or reduce the amount otherwise recoverable in respect of those goods under subsection (1).

118 Power to seize evidence

(1) Any person exercising the power of search conferred by section 111,—

(a) may search for, and if it is found seize, any thing that is, or is a thing of a kind or description, specified in the warrant concerned; and

(b) while at the place specified in the warrant, may seize any other thing that the person believes on reasonable grounds to be a thing in respect of which the person could have obtained a warrant under that section.

(2) Section 199 of the Summary Proceedings Act 1957 shall, with any necessary modifications, apply to any thing seized under subsection (1).

119 Power to seize abandoned goods

(1) An inspector or authorised person may seize and may treat or dispose of any restricted goods (where necessary disabling or killing them first), or any abandoned organism, or any abandoned conveyance, craft, or goods that are reasonably suspected by the inspector or authorised person of containing or harbouring any pest or unwanted organism.

(2) An inspector or authorised person is entitled to regard as abandoned any organism or goods that appear to the inspector or authorised person, after making such inquiries as are reasonable in the circumstances, to have been abandoned or have no apparent or readily identifiable owner.

120 Power to intercept baggage, etc

Any inspector or authorised person who believes on reasonable grounds that—

(a) any of sections 25, 130, 131, 132, or 134(1) has been contravened in respect of any risk goods; and

(b) any bag, baggage, box, container, conveyance, craft, mail, parcel, receptacle, or thing contains, or is likely to contain, those risk goods (or any of them or any part of them),—

may open it (using such force as is reasonable in the circumstances) and
inspect the contents for the presence of risk goods; and may stop any conveyance or craft for the purpose.

121 Power to examine organisms

(1) An inspector or authorised person may, for the purposes of—
(a) taxonomical identification of an organism; or
(b) diagnosing a disease; or
(c) ascertaining the presence or absence of any pest or unwanted organism; or
(d) making an assessment of measures taken to manage or eradicate any pest or unwanted organism,—

examine, inspect, apply tests to, destroy, sample, autopsy, section, take specimens or samples of, or apply any other treatment or procedure to organisms or organic material, or any goods or material that the inspector or authorised person believes on reasonable grounds may harbour pests or unwanted organisms.

(2) Every owner or person in control of any organism, and every occupier of a place in which any organism is present, shall, whenever required by an inspector or authorised person by written notice to do so, submit the organism specified in the notice for the purposes of subsection (1).

(3) Where an inspector or authorised person has under subsection (2) required the submission of any organism an inspector or authorised person may direct the owner or person in control of the organism, or the occupier of any place where it is present, to bring it—
(a) in a specified manner:
(b) to a specified place:
(c) on a specified day:
(d) for a specified purpose.

(4) If the owner or person in control of any animal or the occupier of any place in which an animal is present fails to comply with a direction under this section, an inspector or authorised person may—
(a) undertake any of the actions specified in subsection (1); and
(b) in the case of any animal or animals,—
(i) to the extent that it is necessary to enable those actions to be taken (or taken efficiently), capture, pen, or muster it or them or any of them; or
(ii) if for any reason it is not practicable to capture, pen, or muster it or them or any of them if the inspector or authorised person believes on reasonable grounds that it is necessary to do so for the purpose of controlling pests or unwanted organisms.

(5) Costs and expenses reasonably incurred by an inspector or authorised person in taking any action under subsection (4) may be recovered as a debt due from the person who failed to comply with the direction concerned.

121A Power to apply article or substance to place
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(1) An inspector or authorised person may, for the purpose of ascertaining the presence or absence of any pest or unwanted organism, or of assessing measures taken to manage or eradicate any pest or unwanted organism, bring onto and leave for a reasonable time at any place, any article or substance.

(2) An article or substance brought onto or left at any place must have a volume no greater than 1 cubic metre unless the article or substance is specified in regulations made under this Act.

(3) No person may, without reasonable excuse, move or interfere with any article or substance left at a place by an inspector or authorised person pursuant to this section.

121B Prohibition or control of certain tests

(1) The Governor-General may by Order in Council, prohibit any test, or control the use of any test by making that test subject to conditions imposed by a chief technical officer if the prohibition or control of that test is necessary for—

(a) the effective management or eradication of any pest or unwanted organism; or

(b) the provision of assurances and certificates in relation to exports of organisms and their products.

(2) No person may—

(a) carry out any test prohibited by an Order in Council made under this section:

(b) carry out any test controlled by an Order in Council made under this section other than in accordance with the conditions imposed by a chief technical officer.

(3) No person may act in a manner that the person knows or suspects is likely to alter a response to a controlled test.

(4) For the purposes of this section a test means a test carried out for any of the purposes specified in section 121(1).

(5) An order made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

122 Power to give directions

(1) An inspector or authorised person may, whenever that inspector or authorised person considers it to be necessary, direct the occupier of any place or the owner or person in charge of any organism or risk goods—

(a) to treat any goods, water, place, equipment, fitting, or other thing that may be contaminated with pests or unwanted organisms; or

(b) to destroy any pest or unwanted organism or any organism or organic material or thing that there are reasonable grounds to believe harbours a pest or unwanted organism; or

(c) to take steps to prevent the spread of any pest or unwanted organism.

(2) An inspector or authorised person may, by notice in writing, direct any person who has failed to comply with a rule included in a pest management strategy to comply with that rule.
123 Power to vaccinate, etc

An inspector or authorised person may apply any procedure to organisms (such as medication or vaccination) therapeutically or prophylactically for the purposes of this Act.

124 Power to destroy organism on non-payment of fees

An inspector may destroy or otherwise dispose of an organism that is being lawfully held by the Crown if any treatment fees, quarantine isolation fees, or containment fees due in respect of that organism have not been paid within 20 working days of those fees being demanded from the owner or person who was in apparent control of that organism prior to it passing into the control of the Crown.

125 Transitional facility direction

An inspector may by notice in writing direct that any risk goods specified in the notice shall be placed in a transitional facility for such period as is specified in the notice or until the occurrence of an event specified in the notice.

126 Inspection of and intervention in transitional facilities and containment facilities

(1) An inspector authorised in writing by the Director-General may at any reasonable time enter a transitional facility or a containment facility for the purpose of confirming that the facility complies with the standards set in accordance with section 39 or that the operator is approved as the operator under section 40 for that facility, and the provisions of section 112 apply to any such entry.

(2) An inspector may exercise a power described in subsection (3) if (and only if) the inspector has reasonable grounds to suspect that—

(a) a transitional facility or containment facility does not comply with the standards approved for a facility of that type; or

(b) the operator of a transitional facility or containment facility is not complying with the standards approved for operating that facility; or

(c) the terms (including any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996) upon which an organism is confined to the facility are not being complied with.

(3) An inspector may—

(a) give a direction in writing to the operator of the transitional facility or containment facility specifying the suspected failure to comply or unsatisfactory circumstances, stating what the operator is required to do to remedy the situation and specifying the time within which the direction must be complied with; or

(b) if a chief technical officer considers that emergency or other special circumstances so require, intervene summarily in the management or operation of the transitional facility or containment facility to ensure—

(i) compliance with the standards for that facility; or
(ii) compliance with the terms (including any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996) upon which the organism is confined to the facility.

(4) A direction given under this section may be cancelled or varied by a subsequent notice in writing.

(5) If a direction given under this section is not complied with within the time specified in the notice, an inspector may take such action as the inspector considers necessary to give effect to the requirements of the notice.

(6) The costs and expenses reasonably incurred by an inspector in intervening summarily under subsection (3) or an inspector taking action under subsection (5) may be recovered from the operator of the transitional facility or containment facility as a debt due to the Crown.

127 Destruction of imported organisms

(1) A chief technical officer may by notice in writing given to the operator of a transitional facility direct that any imported organism that has been placed in that facility, and any organism or goods at any time associated with that organism, shall be destroyed or treated or subjected to a specified procedure if the chief technical officer believes on reasonable grounds—

(a) that the imported organism is affected by or harbours a pest or unwanted organism of a kind or to a degree that, even when the organism is in the transitional facility, constitutes an unacceptable risk to the health of organisms in New Zealand; or

(b) the organism is, is affected by, or harbours, a pest under active control in New Zealand; or

(c) that the health of the organism has not been and cannot be satisfactorily established within a reasonable time.

(2) If the operator of a transitional facility fails to comply with a direction under this section, an inspector may seize and destroy the organism concerned.

(3) [Repealed]

(4) The costs and expenses of seizure and destruction of an organism under subsection (2) shall be the responsibility of the owner of the organism and may be recovered as a debt due to the Crown.

128 Power to act on default

(1) Where a notice given to a person under this Act lawfully directing or requiring that person to carry out specified works or measures, or take some other specified action, has not been complied with on the expiry of the time allowed by the notice for compliance, or, if no such time was specified in the notice, within a reasonable time, a chief technical officer, a principal officer or a management agency may cause such works or measures to be carried out or action to be taken as is reasonably necessary and
appropriate for achieving the purposes of the notice.

(2) Where specified works or measures are to be carried out on Maori land, any notice given to the owners shall be given in accordance with section 181 of Te Ture Whenua Maori Act 1993.

(3) The chief technical officer, a principal officer or management agency may recover the costs and expenses reasonably incurred under this section as a debt due from the person to whom the notice was given.

129 Liens

All costs recoverable by a chief technical officer, principal officer, or management agency under section 128 shall be a charge (in this section referred to as the recovery charge) against the land concerned; and—

(a) subject to paragraph (b), the recovery charge shall have priority over all existing or later mortgages, charges, and incumbrances over the land, however they may have been created (including mortgages, charges, and incumbrances in favour of the Crown):

(b) if the land is or becomes subject to some other charge (being a charge created by an enactment other than this section), the charges shall rank equally unless the enactment provides that the other charge is to be deferred to the recovery charge.

Place and area controls

130 Declaration of restricted place

(1) If an inspector or authorised person believes or suspects on reasonable grounds that a pest or unwanted organism is or has been in a place, the inspector or authorised person may, by notice given in accordance with subsections (2) and (3), declare that place and any other place in the neighbourhood the inspector or authorised person considers necessary to be a restricted place.

(2) A notice shall be in a form approved for the purpose by a chief technical officer, a principal officer, or a management agency.

(3) A notice shall be given by serving a copy on the occupier of each place included in the area of the restricted place except that—

(a) a copy need not be served on the occupier of any part of the place if the inspector or authorised person cannot with reasonable diligence discover an occupier of that place who can be found quickly; and

(b) notice may be given publicly if it is impractical to give notice in accordance with the preceding provisions of this subsection.

(4) While a notice under subsection (1) is in force, no person shall, without the permission of an inspector or authorised person,—

(a) remove—

(i) any organism, organic material, or risk goods; or

(ii) any other goods that may have been in contact with any organism, organic material, or risk goods,—
from the place to which the notice relates; or
(b) introduce any goods of any kind to the place.

(4A) Where the agent or employee of an occupier to whom a notice has been given under subsection (1) acts in breach of subsection (4), that action is deemed to be an action of the occupier unless the occupier had given a copy of the notice under subsection (1) to that agent or employee before the agent or employee breached subsection (4).

(5) An inspector or authorised person may, at any time while the declaration of a restricted place is in force, direct that specified organisms, risk goods, or other goods in the restricted place must be—
(a) isolated, confined, or stored in such manner as the inspector or authorised person directs:
(b) identified in a manner specified in the direction, or with an identification applied by the inspector or authorised person.

131 Declaration of controlled area

(1) The purpose of this section is to enable the institution of movement and other controls in order to—
(a) enable the limitation of the spread of any pest or unwanted organism; or
(b) minimise the damage caused by any pest or unwanted organism; or
(c) protect any area from the incursion of pests or unwanted organisms; or
(d) facilitate the access of New Zealand products to overseas markets; or
(e) monitor risks associated with the movement of organisms from parts of New Zealand the pest status of which is unknown.

(2) A chief technical officer or a management agency may, by public notice in a newspaper, or by radio or television announcement, or otherwise as the chief technical officer or management agency considers effective and appropriate, declare any specified area (which may be the whole or any specified part or parts of New Zealand) to be an area that is controlled for the purposes of this section.

(3) At any time while the declaration of a controlled area is in force, the chief technical officer or management agency, as the case may require, may, by public notice in a newspaper, or by radio or television announcement, or otherwise as the chief technical officer or management agency considers effective and appropriate, give notice of either or both of the following matters:
(a) the movement into, within, or from the controlled area of such organisms, organic material, risk goods or other goods as are specified in the notice is restricted, regulated, or prohibited in the manner, to the extent and subject to the conditions specified in the notice:
(b) the organisms, organic material, risk goods, or other goods within the controlled area that are specified in the notice, must be subject to such treatment and procedures as are specified in the notice.
(4) A notice given under subsection (3) may be revoked or may from time to time be replaced or amended.

132 Road blocks, cordons, checkpoints, etc

(1) In this section, control means a road block, a cordon, or a checkpoint.

(2) A District Court Judge may, on the written application (made on oath) of a chief technical officer, issue a warrant authorising the establishment of controls in relation to a place or area, if the District Court Judge is satisfied that—

(a) attempts are being made to manage or eradicate a pest or unwanted organism; and

(b) there are reasonable grounds to suspect that the pest or unwanted organism is present within the place or area; and

(c) the pest or unwanted organism is not known to be present in the places or areas that are adjacent to the place or area; and

(d) it is necessary to establish controls in order to—

(i) prevent or limit the risk of the pest or unwanted organism spreading beyond the place or area if any spread of the organism would significantly affect the likely success of the management or eradication of the pest or unwanted organism; or

(ii) otherwise avoid significant prejudice to the management or eradication of the pest or unwanted organism.

(3) The warrant shall be issued for a period of not more than 7 days; but may from time to time be renewed (in the form in which it was issued or in any amended form) for a period not exceeding 7 days.

(4) The warrant may be issued in writing or orally; but—

(a) if it is issued in writing, it shall specify—

(i) the pest or organism concerned; and

(ii) the approximate location of every cordon whose establishment it authorises; and

(iii) the location (either by way of individual descriptions or by way of descriptions of places of any class or classes) of every other control whose establishment it authorises; and

(iv) the period for which it is granted; and

(v) the grounds on which it was issued; and

(b) if it is issued orally, the Judge shall cause to be made and kept a written record of the matters specified in subparagraphs (i) to (v) of paragraph (a).

(5) Subsection (4) shall, with any necessary modifications, apply to the renewal of a warrant as if it is the issue of a warrant.

(6) Any constable may establish or operate a control whose establishment is authorised by a warrant under this section.

(7) A constable operating a control whose establishment is authorised by a warrant under this section may—
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(a) stop any vehicle, conveyance, or craft, that is at or near the control; or

(b) detain any vehicle, conveyance, or craft, that is stopped at or near the control, either at the place where it is stopped or at any other convenient place nearby,—

for the purpose of exercising the powers conferred by subsection (8).

(8) A constable who has stopped or detained a vehicle, conveyance, or craft under subsection (7) may—

(a) enter and search that vehicle, conveyance, or craft; and

(b) open any box or receptacle in that vehicle, conveyance, or craft; and

(c) seize—

(i) any organism that is the pest or unwanted organism in respect of which the warrant concerned was issued; or

(ii) any thing that may harbour or contain the pest or unwanted organism in respect of which the warrant concerned was issued; or

(iii) any thing that, if moved beyond the control, would be moved in breach of section 130(4); or

(iv) any thing that, if moved beyond the control, would be moved in breach of section 134(1)(b).

(8A) A chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, the treatment of, or any other dealing with, any organism or other thing seized in accordance with subsection (8); and

(8B) In exercising the powers of a chief technical officer in accordance with subsection (8A), a chief technical officer must, so far as is practicable without significantly prejudicing the successful management or eradication of the pest or unwanted organism concerned, act in a manner that is consistent with avoiding or minimising loss to the owner or person in charge of the organism or other thing that was seized.

(9) No person shall,—

(a) while in charge of any vehicle or craft, that is at or near a control, without reasonable excuse fail or refuse to stop it when a constable in uniform asks him or her to stop it, or tries to stop it; or

(b) while in charge of any vehicle or craft lawfully stopped or detained under this section, without reasonable excuse move it from the place where it is stopped or detained without the permission of a constable.

133 Duration of place and area declarations

A declaration of a restricted place or a controlled area shall remain in force until it is revoked by a notice of revocation given substantially in the same manner as the declaration of the area concerned was notified.

134 Enforcement of area controls

(1) No person shall—
(a) resist or obstruct the performance of, or fail to comply with, any direction of a constable who is acting in the performance of duties under section 132; or

(b) move, or direct or arrange the movement of, any organism, organic material, risk goods, or other goods in contravention of a notice under section 131(3), unless permitted by an inspector or authorised person.

(1A) Every owner or person in control of an organism, organic material, risk goods, or other goods in respect of which treatment and procedures are specified by a notice under section 131(3) must carry out the treatment and procedures specified in the notice.

(2) All organisms, organic material, risk goods, or other goods that are removed or moved in contravention of subsection (1) may be seized by an inspector or authorised person and destroyed, treated, or otherwise dealt with, if it is reasonable in the circumstances to do so.

(3) A Minister may direct that organisms, organic material, risk goods, or other goods that were removed or moved in contravention of subsection (1) and have been seized shall be forfeited to a management agency and destroyed, sold, or otherwise disposed of as that agency may direct.

Recovery of costs

135 Options for cost recovery

(1) The Director-General, every other chief executive, and every management agency, (hereafter in this section and in section 136 referred to as a recovering authority) shall take all reasonable steps to ensure that so much of the costs of administering this Act, including costs incurred as the management agency of a pest management strategy, as are not provided for by money appropriated by Parliament for the purpose are recovered in accordance with the principles of equity and efficiency in accordance with this section and the regulations.

(2) In determining appropriate mechanisms for the recovery of costs of a particular function or service, a recovering authority shall ensure that there is recovered any amount by which—

(a) the sum of—

(i) the costs of the function in the current year; and

(ii) any shortfall in the recovery of the costs in the preceding year; exceeds

(b) any over-recovery of costs in respect of the preceding year.

(3) A recovering authority may recover costs of administering this Act and performing the functions, powers, and duties provided for in this Act by such methods as he or she or it believes on reasonable grounds to be the most suitable and equitable in the circumstances, including any 1 or more of the following methods:

(a) fixed charges:

(b) charges fixed on an hourly or other unit basis:
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(c) estimated charges paid before the provision of the service or performance of the function followed by reconciliation and an appropriate payment or refund after provision of the service or performance of the function:

(d) actual and reasonable charges:

(e) refundable or non-refundable deposits paid before provision of the service or performance of the function:

(f) charges imposed on users of services or third parties:

(g) in the case only of the Director-General or some other chief executive, liens on property in the possession of the Crown.

136 Failure to pay

(1) Where all or part of a charge made under this Act or the regulations remains unpaid after 20 working days since the charge was demanded in writing, the debt shall be deemed to have been increased by an amount calculated in accordance with subsection (2).

(2) The amount by which an unpaid charge is deemed to have increased is the sum of—

(a) 10% of the debt, or that part of it that remained unpaid after the expiration of the period of 20 working days referred to in subsection (1); and

(b) for every complete period of 6 months after the expiration of that period during which the debt or any part of it (including any deemed increase under this section) has remained unpaid, 10% of that debt or that part.

(3) If a recovering authority is satisfied that the failure or refusal of any person to pay all or any part of a debt was a result of a genuine dispute between the person and department as to the person’s liability to pay the debt, the amount of the debt, or both, the recovering authority may waive the payment of all or any part by which the debt has increased under this section.

(4) In an action for recovery of the debt, the court may exercise the power of waiver contained in subsection (3) if the court is satisfied in the terms set out in that subsection.

137 Levies

(1) The Governor-General may from time to time, on the recommendation of the responsible Minister, by Order in Council impose a levy payable to the Director-General for the purposes of wholly or partially funding a service provided or function performed by the department for the purposes of this Act.

(2) Every levy order shall be deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

138 Orders to be confirmed

(1) Where in any year an order under section 137 has been made on or after 1 January and before 1 July, and—

(a) has not been revoked with effect on or before 1 July in the next year; and

(b) has not ceased, and will not cease, to have effect
on or before 1 July in the next year by virtue of the
Regulations (Disallowance) Act 1989,—it shall be deemed to have been revoked with the close of 30 June in that next year unless it has been confirmed by an Act of Parliament passed on or before that day.

(2) Where in any year an order under section 137 has been made after 30 June and on or before 31 December, and—
(a) has not been revoked with effect on or before 1 January in the year after the next year; and
(b) has not ceased, and will not cease, to have effect on or before 1 January in the year after the next year by virtue of the Regulations (Disallowance) Act 1989,—it shall be deemed to have been revoked with the close of 31 December in the year after the year in which it was made, unless it has been confirmed by an Act of Parliament passed on or before that day.

139 Restrictions on levies
The Minister shall not recommend the making of an order under section 137 unless the Director-General has satisfied the Minister that—
(a) the imposition of a levy recovering the costs of providing or performing a particular service or function is in accordance with the principles of equity and efficiency; and
(b) either—
(i) the persons who will be responsible for paying the levy will benefit from the provision or performance of the particular service or function; or
(ii) the persons who will be responsible for paying the levy create risks that require the provision or performance of the particular service or function; and
(c) all other relevant matters known to the Minister have been properly considered.

140 Contents of levy order
(1) Every order under section 137 shall specify—
(a) the persons primarily responsible for paying the levy; and
(b) the basis on which the amount of levy is to be calculated or ascertained; and
(c) the persons (if any) to be exempt from paying the levy; and
(d) the persons responsible for collecting the levy from those primarily responsible for paying it; and
(e) how the levy is to be spent, in consultation with those persons primarily responsible for paying the levy; and
(f) when and how the levy is to be paid; and
(g) the maximum rate of levy; and
(h) how the actual rate of the levy is to be set; and
(i) how the rates of the levy and variation of rates are to be notified; and
(j) whether or not the persons collecting the levy are entitled to recover the cost of levy collection and the estimated amount.

(2) The order may prescribe any of the following matters:
(a) the making of returns to the Director-General or some other person or body for
the purpose of enabling or assisting the determination of amounts of levy payable:

(b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of any levy:

(c) the payment of additional or increased levy when amounts of levy otherwise payable have been paid late, paid in part or not paid at all.

(d) the holding of funds from which payments of levy are to be made, on trust in separate accounts.

140A Trust accounts for levy money payable to Director-General

(1) Where an order under section 137 provides that funds from which payments of levy are made are to be held on trust in separate accounts, the persons responsible for collecting the levy must each keep a bank account (in this section referred to as a trust account) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and—

(a) ensure that the account is so named as to identify that it is a trust account kept by the person responsible for collecting the levy for the purposes of the order; and

(b) take all practicable steps to ensure that—

(i) the account is used only for holding amounts required to be deposited by subsection (3); and

(ii) the balance in the account on any day is not less than the amount outstanding to the Director-General on that day by the person responsible for collecting the levy.

(2) For the purpose of this section, the amount outstanding to the Director-General by a person responsible for collecting the levy on any day is the remainder obtained by subtracting—

(a) the total of all amounts of levy paid by that person to the Director-General before that day calculated on the basis specified in the order under section 137; from

(b) the total of all amounts required by subsection

(3) to be deposited in the trust account by the person responsible for collecting the levy not later than a day before that day.

(3) Where a person is responsible for collecting a levy, that person must deposit an amount equal to the levy calculated on the basis provided for in the order under section 137 in the trust account on the day or days specified in that order or on a day or days calculated in accordance with that order.

(4) There is deemed to be held on trust for the Director-General as levy money—

(a) the amount outstanding to the Director-General by the person responsible for collecting the levy held in the trust account specified in the order under section 137; or

(b) where the amount held in the account is less than the amount outstanding, all the money in the account.

(5) Money deemed by subsection (4) to be held on trust—
(a) is not available for the payment of; and
(b) is not liable to be attached or taken in execution at the instance of—
any creditor of the person responsible for collecting the levy (other than the Director-General).

(6) A person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account referred to in this section until all the levy money payable to the Director-General in respect of the period during which that person was responsible for collecting the levy has been paid.

(7) Nothing in subsection (6) limits or affects any obligation or liability under this Act of any person who has become responsible for collecting the levy.

141 Effect of levy order
Where an order is made under section 137, the following provisions apply:
(a) every person responsible for paying the levy to the Director-General shall do so; and
(b) the Director-General may recover the levy from any person responsible for paying it as a debt due in a court of competent jurisdiction.

141A Orders to provide for records to be kept for Director-General’s levy
For the purpose of ascertaining whether or not an order under section 137 is being complied with, the order must provide for—
(a) the keeping of statements, accounts, and records of specified classes or descriptions
by the Director-General, persons responsible for collecting the levy, and persons responsible for paying the levy concerned, or any of them; and
(b) any such statements, accounts, or records to be retained for a specified period.

141B Compliance audits for Director-General’s levy
(1) While an order under section 137 is in force, the Minister may, at the request of the Director-General, appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:
(a) some or all of the persons responsible for collecting the levy:
(b) some or all of the persons responsible for paying the levy.

(2) While an order under section 137 is in force, the Minister may, if an arbitrator has been appointed to resolve a dispute, appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.

(3) No person is qualified for appointment as an auditor unless the person is a chartered accountant (within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996) or a member, fellow, or associate of an association of accountants constituted in some part of the Commonwealth outside New Zealand, and for the time being approved for the purpose of the audit of company financial statements by the Minister of the Crown who, under the authority of any warrant or with the
authority of the Prime Minister, is for the
time being responsible for the
administration of the Companies Act 1993,
by notice published in the *Gazette*.

(4) No officer or employee of any of the
following persons or organisations may be
appointed an auditor:

(a) the Director-General;
(b) any person responsible for collecting the
levy under the order concerned;
(c) any person responsible for paying the
levy under the order concerned.

(5) Every person appointed as an auditor is
entitled to remuneration (paid by the
Director-General) as provided in the
relevant levy order.

(6) For the purposes of sections 141C and
141D, *auditor* means a person for the
time being appointed under subsection (1) or
subsection (2).

141C Purpose of compliance audits for
Director-General’s levy

(1) The purpose of an audit conducted by an
auditor appointed under section 141B(1) is
(so far as is practicable) to ascertain in
respect of the affairs of the persons whose
affairs are to be audited, and report to the
Minister responsible for the order on, as
many of the following matters as are
relevant to those affairs:

(a) the extent to which persons responsible
for paying the levy concerned are doing and
have done so:
(b) the extent to which appropriate
amounts of the levy concerned are being
and have been paid:
(c) the extent to which appropriate amounts
of the levy concerned are being and have
been collected:
(d) the extent to which appropriate amounts
of the levy concerned are being and have
been paid over to the Director-
General by persons collecting it:
(e) the extent to which statements,
accounts, and records are being and have
been kept:
(f) the extent to which statements,
accounts, and records that are being and
have been kept are being and have been
properly kept.

(2) The purpose of an audit conducted by an
auditor appointed under section 141B(2) is
(so far as is practicable) to ascertain in
respect of the affairs of the parties to the
dispute, and report to the arbitrator
concerned, the Minister responsible for the
order, and those parties, on the matters of
fact that are in dispute.

141D Power of auditors to require
production of statements and records

(1) For the purposes of conducting an audit,
any auditor specifically or generally
authorised in writing in that behalf by a
Minister may from time to time require any
person (being the Director-General, a
person responsible for collecting levies, a
person responsible for paying levies, or any
employee or officer of the Director-General,
or any such person) to produce for
inspection within a reasonable period
specified by the auditor any statements,
accounts, and records in the possession or under the control of that person (being statements, accounts, or records that are required to be kept under this Act or by an order), and may take copies of or extracts from any such document.

(2) Every authorisation under subsection (1) must contain—
(a) a reference to this section; and
(b) the full name of the auditor; and
(c) a statement of the powers conferred on the auditor by subsection (1).

(3) Subject to section 141C(2), except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no auditor who exercises powers under this section may disclose to any other person (other than a Minister or a person authorised in that behalf by a Minister) any information obtained by the auditor as a result of the exercise of the power.

(4) Notwithstanding subsection (3), the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to this section.

142 Resolution of disputes

Every order under section 137 shall provide for—

(a) the appointment of arbitrators to resolve disputes as to—
   (i) whether or not any person is required to pay the levy concerned;
   (ii) the amount of levy any person is required to pay; and
   (b) the procedures to be followed by arbitrators; and
   (c) remuneration of arbitrators; and
   (d) the payment of arbitration costs; and
   (e) a right of appeal to a District Court Judge against decisions of arbitrators and the procedures governing the exercise of that right; and
   (f) any other matters relating to the resolution of such disputes.

Part 7 Exigency actions

143 Purpose of Part 7

The purpose of this Part is to provide for the effective prevention, management, or eradication of unwanted organisms if emergencies or other exigencies occur.

144 Declaration of biosecurity emergency

(1) On the recommendation of a Minister, the Governor-General may, by Proclamation, declare a biosecurity emergency if satisfied on reasonable grounds after having regard to all available information that—

(a) it is likely that—
   (i) there has been an outbreak or occurrence in New Zealand of an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant
environmental loss, or both, if it becomes established in New Zealand; or

(ii) there is established in part of New Zealand an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant environmental loss, or both, if it becomes established in other parts of New Zealand; or

(iii) an organism previously thought to be of restricted distribution or abundance (or both) in New Zealand is becoming or has become so distributed and abundant in New Zealand or any part of New Zealand that it has the potential to cause significant economic loss, significant environmental loss, or both; or

(iv) a pest is, or threatens to be, beyond control by the application of the national pest management strategy for that pest; and

(b) it is in the public interest that action be taken immediately to manage, or eradicate the organism and sufficient powers are not otherwise available to enable the organism to be effectively managed, or eradicated.

(2) The Minister shall, to the extent that is practical in the circumstances, consult such persons as the Minister believes on reasonable grounds are representative of interests involved in the emergency before recommending that the Governor-General declare a biosecurity emergency.

(3) A declaration of a biosecurity emergency shall state the area or areas to which it applies and specify the nature of the emergency.

(4) A declaration of a biosecurity emergency comes into force when it is declared or at any later time stipulated in the Proclamation declaring it.

(5) The Minister shall publish notice of the declaration not later than 24 hours after it is made by such means as the Minister considers practical and appropriate and shall cause the Proclamation to be published in the Gazette without delay.

(6) On the recommendation of the Minister, the Governor-General may by further Proclamation amend or revoke a Proclamation under this section and the Minister shall publish notice of an amendment or revocation in the manner provided by subsection (5).

145 Emergency powers

(1) The Minister may, in the area or areas in which a declaration of biosecurity emergency is in force, take such measures, and do all such acts and things and give all such directions, and require all such acts to be done or not to be done, as the Minister believes on reasonable grounds to be necessary or desirable for the purpose of managing, or eradicating the organism in respect of which the emergency has been declared.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister, or any person authorised by the
Minister for the purpose, may require the owner of any goods or premises or craft (being a craft registered in New Zealand, or chartered by a company formed and registered under the Companies Act 1955 or under any of the enactments referred to in the definition in section 2(1) of that Act of the term existing company) that is anywhere in New Zealand and that the Minister or person authorised by the Minister believes on reasonable grounds to be necessary or would be of assistance in eradicating, or limiting the spread of the organism to transfer the goods to or permit the premises or craft to be used for a specified period by the Minister or any other person.

146 Duration of emergency

(1) Unless it is sooner revoked or extended by the House of Representatives, a declaration of biosecurity emergency ceases to have effect on the expiration of 4 months after it comes into force.

(2) The House of Representatives may from time to time by resolution extend any declaration of biosecurity emergency for such period as the resolution may state.

(3) A resolution under subsection (2) shall be published in the manner provided in section 144(5).

147 House of Representatives to be informed

(1) The Minister shall inform the House of Representatives immediately of the making of a Proclamation declaring, amending, revoking, or extending a biosecurity emergency if the House is then sitting, or, if it is not then sitting, the Minister shall so inform the House as early as is practicable on its next sitting day.

(2) The Minister shall explain the reasons for the Proclamation.

148 Revocation by House of Representatives of biosecurity emergency

(1) The House of Representatives may by resolution revoke a declaration of biosecurity emergency at any time.

(2) A resolution revoking a declaration of biosecurity emergency has effect from the time of the resolution or any later time specified in the resolution.

149 Compensation [Repealed]

150 Biosecurity emergency regulations

(1) On the recommendation of the Minister, the Governor-General may, at any time while a declaration of biosecurity emergency is in force, by Order in Council make regulations for the management, or eradication of the organism in respect of which the emergency has been declared or otherwise for dealing effectively with the emergency.

(2) The Minister shall, to the extent that is practical in the circumstances, consult such persons as the Minister believes on reasonable grounds are representative of interests affected by the proposed
NEW ZEALAND regulations before recommending that the Governor-General make regulations under this section; and shall not recommend that the Governor-General make them unless satisfied, on reasonable grounds, that they are necessary or desirable for the management, or eradication of the organism concerned.

(3) Without prejudice to the generality of subsection (1), biosecurity emergency regulations may do all or any of the following things:

(a) create offences in respect of the breach of a biosecurity emergency regulation or non-compliance with a direction given or requirement made under the authority of such a regulation;

(b) prescribe as the penalty for an offence created by a biosecurity emergency regulation—

(i) where the offence is committed by an individual, a fine not exceeding $15,000; and

(ii) where the offence is committed by a body corporate, a fine not exceeding $75,000:

(f) prescribe procedures for arbitration or resolution of disputes.

(4) A biosecurity emergency regulation comes into force at the time at which the regulation is made, or the time specified in the regulation, whichever is the later.

(5) The responsible Minister shall lay all biosecurity emergency regulations before the House of Representatives not later than the second sitting day after they are made.

151 Emergency regulations to be confirmed

(1) Where in any year regulations under section 150 have been made on or after 1 January and before 1 July, and—

(a) have not been revoked with effect on or before 1 July in the next year; and

(b) have not ceased, and will not cease, to have effect on or before 1 July in the next year by virtue of the Regulations (Disallowance) Act 1989,—

they shall be deemed to have been revoked with the close of 30 June in that next year unless they have been confirmed by an Act of Parliament passed on or before that day.

(2) Where in any year regulations under section 150 have been made after 30 June and on or before 31 December, and—

(a) have not been revoked with effect on or before 1 January in the year after the next year; and

(b) have not ceased, and will not cease, to have effect on or before 1 January in the year after the next year by virtue of the Regulations (Disallowance) Act 1989,—

they shall be deemed to have been revoked with the close of 31 December in the year after the year in which they were made, unless they have been confirmed by an Act of Parliament passed on or before that day.

152 Provisional control action

(1) If a Minister suspects on reasonable grounds that a pest or unwanted organism may be present in New Zealand but is unable to confirm the suspicion until further information is available to enable identification of the organism and
consideration of the appropriate means of eradicating or managing the organism, and the Minister believes on reasonable grounds that sufficient powers are not otherwise available under this Act to prevent the spread or development of the organism, the Minister may by written notice to a chief technical officer declare a provisional control programme.

(2) A notice given under subsection (1) must—
(a) specify the steps that the Minister believes are necessary or desirable to provisionally control the spread or development of the suspected organism; and
(b) authorise the chief technical officer to direct any inspector or authorised person to carry out the steps specified in the notice in such a manner as the chief technical officer thinks fit, and the inspector or authorised person may act accordingly.

(3) A provisional control programme declared in accordance with this section may remain in force for such period not exceeding 60 days as the Minister believes on reasonable grounds to be necessary and the Minister may extend the programme for 1 further period not exceeding 60 days.

153 Compensation following investigation of pests

[Repealed]

Part 8
Enforcement, offences, and penalties

154 Offences

Every person commits an offence against this Act who—
(a) threatens, assaults, or intentionally obstructs or hinders,—
(i) an inspector, authorised person, or accredited person; or
(ii) an assistant of an inspector, authorised person, or accredited person,—
in the exercise or performance of a function, power or duty under this Act, the regulations, a pest management strategy, or a declaration of emergency under section 144:
(b) in connection with the purposes of this Act,—
(i) makes or gives to an inspector or authorised person, or an assistant of an inspector or authorised person, a statement or information that the person knows to be false or misleading in a material particular; or
(ii) in circumstances where the person is required to provide information, wilfully withholds relevant information from an inspector or authorised person, or an assistant of an inspector or authorised person; or
(iii) in circumstances where the person is required to make a return or declaration or give a certificate, knowingly makes or gives a return, declaration, or certificate that is false or misleading in a material particular:
(c) personates or falsely represents himself or herself to be an inspector, authorised person, accredited person, assistant, or
other person authorised to exercise a function, power, or duty conferred or imposed by or under this Act:

(d) without reasonable excuse, fails to comply with a reasonable direction given to that person in accordance with and for the purposes of this Act by an inspector or authorised person, or the assistant of an inspector or authorised person:

(e) without reasonable excuse, fails to comply with a reasonable requirement made of that person in accordance with and for the purposes of this Act by an inspector or authorised person, or the assistant of an inspector or authorised person:

(f) has unauthorised goods in his or her possession or control, knowing that they are unauthorised goods:

(g) buys, sells, exchanges, or otherwise acquires or disposes of, unauthorised goods—

(i) knowing that they are unauthorised goods; or

(ii) knowing that they may be unauthorised goods, and reckless as to whether they are or not:

(h) knowing that goods are risk goods that have been seized by, or are otherwise under the control of, an inspector or authorised person,—

(i) makes an alteration to the condition of the goods; or

(ii) unpacks or repacks the goods,— otherwise than with and in accordance with the permission of an inspector or authorised person:

(i) knowing that goods are risk goods that—

(ii) are stored in a place where an inspector or authorised person has directed that they should be stored,— removes the goods from the place otherwise than with and in accordance with the permission of an inspector or authorised person:

(j) without the permission of an inspector or authorised person, takes or carries away or otherwise converts to his or her own use any goods, knowing that they are risk goods that have been seized under this Act:

(k) without the permission of an inspector or authorised person, exhumes the carcass of any organism or any other risk goods, knowing it or them to have been buried as required by a direction given under this Act:

(l) knowing that a notice under section 130(1) is in force in relation to a place, without the permission of an inspector or authorised person,—

(i) removes any organism, organic material, or risk goods from the place; or

(ii) removes from the place any goods that have while in the place been in contact with any organism, organic material, or risk goods; or

(iii) introduces any goods into the place; or

(iv) removes, alters, or defaces any identification that an inspector or authorised person has directed be used to identify any organism, risk goods, or other goods in the place:
(m) fails or refuses to comply with any of sections 29, 46, 52, 53, and 134:

(ma) fails to comply with section 44 (duty to inform Ministry of organism not normally seen or otherwise detected in New Zealand), if the person knows or could reasonably be expected to know that the organism is not normally seen or otherwise detected in New Zealand:

(n) fails or refuses to comply with any of sections 17, 18, 25, 30, 31, 41(5), 51(1), 51(2) and 121B(2):

(o) fails or refuses to comply with any of sections 19, 34, 35, 36, 37C, 40(6), 43, 48, 51(3), 121(2), 121A(3), and 132(9):

(p) having (while in a biosecurity control area) been asked by an inspector to answer any question that is necessary for the inspector to ascertain the presence, nature, origin, or itinerary, of any risk goods,—

(i) fails or refuses to answer it within a reasonable time of its being asked; or

(ii) fails or refuses to answer it completely within a reasonable time of its being asked; or

(iii) wilfully gives a false or misleading answer:

(q) without reasonable excuse, fails to comply with a strategy rule included in a national pest management strategy where that rule specifies that a breach of the rule creates an offence under this paragraph:

(r) without reasonable excuse, fails to comply with a strategy rule included in a regional pest management strategy where that rule specifies that a breach of the rule creates an offence under this paragraph:

(s) erroneously declares, in circumstances where that person is required to make a declaration in relation to goods specified in that declaration, that he or she is not in possession of any or all of those goods:

(t) knowingly fails to comply with any provision of this Act relating to the holding of levy money in trust accounts:

(u) fails to keep or properly maintain statements, accounts, or records of any leviable activity carried on by that person sufficient to satisfy the requirements of any order made under section 90 or section 137:

(v) refuses or fails, without reasonable excuse, to comply with any requirement made under section 95D(1) or section 141D(1).

155 Proof of permission, etc

Where it is proved in any proceeding under this Act or the regulations that a person has done or omitted to do any act and such person would commit an offence or be liable for a debt or damages unless the act was done or omitted with the permission of a Minister, the Director-General, a chief technical officer, a management agency, or an inspector or authorised person, the onus shall be on the person who did or omitted to do the act to prove that he or she had that permission.

156 Liability of principals and agents

(1) If an offence is committed against any of the provisions of this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act, in the same manner and to the same extent as if he or she had personally committed the offence, if it is proved that the act that
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constituted the offence took place with his or her authority, permission, or consent, or that he or she knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

(2) Where any body corporate is convicted of an offence against this Act, every person, being a director or a person concerned in the management of the body corporate, shall be guilty of the same offence if it is proved that the act that constituted the offence took place with that person’s authority, permission, or consent, or that the person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

157 Penalties

(1) Every person who commits an offence against any of paragraphs (f), (g), (h), (i), (j), (k), (l), or (m) of section 154 is liable on conviction on indictment,—

(a) in the case of an individual person, to imprisonment for a term not exceeding 5 years, a fine not exceeding $100,000, or both:

(b) in the case of a corporation, to a fine not exceeding $200,000.

(2) Every person who attempts to commit an offence against section 154(f) is liable on conviction,—

(a) in the case of an individual person, to imprisonment for a term not exceeding 5 years, a fine not exceeding $100,000, or both:

(b) in the case of a corporation, to a fine not exceeding $200,000.

(3) Every person who commits an offence against any of paragraphs (a), (b), (c), (n), or (t) of section 154 is liable on summary conviction,—

(a) in the case of an individual person, to imprisonment for a term not exceeding 12 months, a fine not exceeding $50,000, or both:

(b) in the case of a corporation, to a fine not exceeding $100,000.

(4) Every person who commits an offence against paragraph (d) or paragraph (e) of section 154 is liable on summary conviction,—

(a) in the case of an individual person, to imprisonment for a term not exceeding 3 months, a fine not exceeding $50,000, or both:

(b) in the case of a corporation, to a fine not exceeding $100,000.

(5) Subject to section 159, every person who commits an offence against any of paragraphs (ma), (o), (p), (q), (r), (u), or (v) of section 154 is liable on summary conviction,—

(a) in the case of an individual person, to a fine not exceeding $5,000:

(b) in the case of a corporation, to a fine not exceeding $15,000.

(6) Every person who commits an offence against any regulations made under this Act is liable on summary conviction,—

(a) in the case of an individual person, to a fine not exceeding $5,000:
(b) in the case of a corporation, to a fine not exceeding $15,000.

(7) Subject to section 159A, every person who commits an offence against paragraph (s) of section 154 is liable on summary conviction to a fine not exceeding $1,000.

158 Fines to be paid to management agency instituting prosecution

(1) Subject to subsection (2), where a person is convicted of an offence under this Act and the court imposes a fine, the court shall, if the information for that offence was laid on behalf of a management agency, order that the fine be paid to the management agency.

(2) There shall be deducted from every amount payable to a management agency under subsection (1), a sum equal to 10% of it, which shall be credited to a Crown Bank Account.

(3) Notwithstanding anything in subsection (2), where any money awarded by a court in respect of any loss or damage is recovered as a fine, and that fine is ordered to be paid to a management agency under subsection (1), no deduction shall be made under subsection (2) in respect of that money.

(4) Subject to subsection (2), an order of the court made under subsection (1) shall be sufficient authority for the Registrar receiving the fine to pay it to the management agency entitled to it.

159 Proceedings for infringement offences

(1) Where an inspector has reason to believe that a person (in this section referred to as the defendant) has committed an infringement offence (other than a border infringement offence),—

(a) the defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or

(b) the inspector may issue an infringement notice in respect of the alleged offence.

(2) Any inspector (not necessarily the inspector who issued the notice)—

(a) may deliver it (or a copy of it) to the defendant personally; or

(b) may send it (or a copy of it) to the defendant by post addressed to the defendant’s last known place of residence or business; and in that case, for the purposes of the Summary Proceedings Act 1957, it (or the copy) shall be deemed to have been served on the defendant when it was posted.

(3) Every infringement notice shall be in a form prescribed by regulations made under this Act; and shall specify—

(a) sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged; and

(b) the amount of the infringement fee for the offence; and

(c) where the fee may be paid; and

(d) the time within which the fee may be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
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(f) that the defendant has the right to request a hearing; and
(g) a statement of what will happen if the defendant neither pays the fee nor requests a hearing; and
(h) any other matters prescribed in that behalf.

159A Accelerated infringement notice procedure for border infringement offences

(1) If an inspector has reason to believe that a person (in this section referred to as the defendant) has committed a border infringement offence,—
(a) the defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or
(b) the inspector may issue an infringement notice in respect of the alleged offence.

(2) Any employee of the Ministry (not necessarily the inspector who issued the notice)—
(a) may deliver an infringement notice (or a copy of it) to the defendant personally; or
(b) may send it (or a copy of it) to the defendant by post addressed to the defendant’s last known place of residence or business.

(3) For the purposes of subsection (6), an infringement notice sent to a person by post is deemed to have been served on the defendant when it was posted.

(4) An infringement notice under this section must be in the prescribed form, and must specify—
(a) sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
(b) the amount of the infringement fee for the offence; and
(c) where the fee may be paid; and
(d) the time within which the fee may be paid; and
(e) how and where payment may be made under subsection (5); and
(f) a summary of how the provisions of section 21(10) of the Summary Proceedings Act 1957 apply to the offence alleged; and
(g) that the defendant has a right to request a hearing; and
(h) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
(i) such other particulars as are prescribed by regulations made under this Act.

(5) If the infringement notice is served by delivering it to a person at a port approved under section 37 or section 37A, that person may choose to pay immediately the infringement fee in the manner specified in the notice.

(6) The Ministry may provide particulars of an infringement notice in accordance with section 21(4) and (4A) of the Summary Proceedings Act 1957, after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—
(a) the infringement fee for the offence has not by then been paid to the Ministry at the address specified in the notice (or immediately under subsection (5)); and

(b) the Ministry has not by then received at that address a notice requesting a hearing in respect of that offence.

(7) If an infringement notice has been issued and served under this section, the Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if—

(a) the reference in section 21(1)(b) to providing particulars of a reminder notice under that section were a reference to providing particulars of the infringement notice under subsection (6) of this section; and

(b) subsection (6) were in the place of section 21(3); and

(c) the reference in section 21(3A) to the particulars of a reminder notice not having been provided under section 21(3) were a reference to the particulars of the infringement notice not having been provided under subsection (6) of this section; and

(d) every reference in section 21(4), (4A), and (4B) to particulars of a reminder notice were a reference to the particulars of an infringement notice and every reference to the contents of a reminder notice were a reference to the contents of an infringement notice; and

(e) the reference in section 21(4)(a) to parts of the reminder notice were a reference to parts of the infringement notice; and

(f) the reference in section 21(4C) to particulars of a reminder notice were a reference to particulars of an infringement notice; and

(g) the reference in section 21(4C) to the reminder notice were a reference to the infringement notice; and

(h) the reference in section 21(5) to the verification of particulars of a reminder notice provided under section 21(3) were a reference to the verification of particulars of an infringement notice provided under subsection (6) of this section; and

(i) the reference in section 21(6)(b) and in section 21(10)(a) to a period of 28 days after the service of a reminder notice were a reference to the period of 14 days after the service of the infringement notice; and

(j) each reference in section 21A and section 78B to a reminder notice were a reference to an infringement notice and each reference in section 21A and section 78B to the reminder notice were a reference to the infringement notice; and

(k) the references to reminder notices in the definition of defendant in section 2(1), and in section 212, and in any other relevant provisions of that Act or regulations made under that Act, were references to the infringement notice.

(8) [Repealed]

(9) Despite section 203(1) of the Summary Proceedings Act 1957, an infringement
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notice under this section may be issued and
served on a Sunday.

160 Payment of infringement fees
All infringement fees received under section
159 or section 159A must be paid into a
Crown Bank Account.

161 Evidence in proceedings
(1) In any proceedings for an offence against
this Act or against any regulations made
under this Act, a certificate that complies
with subsection (4) and to which subsection
(2) applies—
(a) is admissible in evidence; and
(b) is, in the absence of proof to the
contrary, sufficient evidence of the matters
stated in it.
(2) This section applies to any certificate of
1 or more of the following kinds:
(a) a certificate purporting to be signed by
the principal officer of a regional council
stating that a document attached to the
certificate is—
   (i) a regional pest management
strategy made by the council; or
   (ii) an amendment to such a
strategy:
(b) a certificate purporting to be signed by
the Director-General stating that a person
specified in the certificate is—
   (i) a chief technical officer
appointed under section 101(1); or
   (ii) a deputy chief technical officer
appointed under section 102:
(c) a certificate purporting to be signed by
the chief executive of a department stating
that a person specified in the certificate is—
   (i) a chief technical officer
appointed under section 101(2); or
   (ii) a deputy chief technical officer
appointed under section 102:
(d) a certificate purporting to be signed by a
chief technical officer appointed under
section 101(1) stating that the person
specified in the certificate is—
   (i) an inspector or authorised person
appointed
   by that chief technical officer under
section
   103(1)(a); or
   (ii) an authorised person appointed
by that chief technical officer under
section 103(1)(b) in relation to the
national pest management strategy
described in, or attached to, the
certificate:
(e) a certificate purporting to be signed by a
chief technical officer appointed under
section 101(2) stating that the person
specified in the certificate is—
   (i) an inspector or authorised person
appointed by that chief technical officer under
section 103(2)(a); or
   (ii) an authorised person appointed
by that chief technical officer under
section 103(2)(b) in relation to the
national pest management strategy
described in, or attached to, the
certificate:
(f) a certificate purporting to be signed by
the principal officer of a regional council
stating that a person specified in the
certificate is an authorised person appointed by that principal officer under section 103(3) in relation to a regional pest management strategy or small-scale management programme specified or described in, or attached to, the certificate:

(g) a certificate purporting to be signed by any person authorised by this Act, the State Sector Act 1988, or the Local Government Act 2002 to delegate to any person (or people of any kind or description) the exercise or performance of any power or function under this Act stating that—

(i) the person has delegated the exercise or performance of the power or function under this Act specified in the certificate to the person specified in the certificate; or

(ii) the person has delegated the exercise or performance of the power or function under this Act specified in the certificate to people of a kind or description specified in the certificate, and that a person specified in the certificate is a person of that kind or description:

(h) a certificate purporting to be signed by the Director-General stating that a place specified in the certificate is—

(i) a biosecurity control area; or

(ii) a transitional facility approved for use or uses specified in the certificate; or

(iii) a containment facility:

(i) a certificate purporting to be signed by a chief technical officer or the chief executive of a management agency stating that—

(i) an area specified in the certificate is an area controlled for the purposes of section 131; and

(ii) the movement into, within, or from the controlled area of the organisms, organic material, risk goods, or other goods specified in the certificate is restricted, regulated, or prohibited, in the manner, to the extent, and subject to the conditions specified in the certificate; and

(iii) the organisms, organic material, risk goods, or other goods specified in the certificate are subject to the treatment and procedures specified in the certificate.

(3) The production of a document purporting to be a certificate to which subsection (2) applies is prima facie evidence that it is such a certificate, without proof of the signature of the person purporting to have signed it.

(4) A certificate to which subsection (2) applies is not admissible in evidence unless—

(a) at least 14 days before the hearing at which the certificate is to be tendered, a copy is served, by or on behalf of the prosecutor, on the defendant or the defendant’s agent or counsel, and that person is at the same time informed in writing that the prosecutor does not propose to call the person who signed the certificate as a witness at the hearing; and
(b) the court has not, on the application of the defendant made not less than 7 days before the hearing, ordered, not less than 4 days before the hearing (or such lesser period as the court in the special circumstances of the case thinks fit), that the certificate should not be admissible as evidence in the proceedings.

(5) The court must not make an order under subsection (4)(b) unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of a certificate.

162 Time for laying informations

Notwithstanding section 14 of the Summary Proceedings Act 1957, an information in respect of an offence against this Act or any regulations made under it may be laid at any time within 2 years of the time when the matter of the information arose.

Part 9 Miscellaneous provisions

162A Compensation

(1) Where—

(a) powers under this Act are exercised for the purpose of the management or eradication of any organism; and

(b) the exercise of those powers causes verifiable loss as a result of—

(i) the damage to or destruction of a person’s property; or

(ii) restrictions, imposed in accordance with Part 6 or Part 7, on the movement or disposal of a person’s goods,—

that person is entitled to compensation for that loss.

(2) The compensation payable under this section must be of such an amount that the person to whom it is paid will be in no better or worse position than any person whose property or goods are not directly affected by the exercise of the powers.

(3) Compensation payable by a Minister or by a chief executive is payable from money appropriated by Parliament for the purpose.

(4) Compensation must not be paid under this section to any person—

(a) in respect of a loss in relation to unauthorised goods or uncleared goods; or

(b) in respect of a loss suffered before the time when the exercise of the powers commenced; or

(c) who has failed to comply with this Act or regulations made under this Act and whose failure has been serious or significant or has contributed to the presence of the organism or to the spread of the organism being managed or eradicated.

(5) Any dispute concerning the eligibility for, or amount of, compensation must be submitted to arbitration and the provisions of the Arbitration Act 1996 apply.

(6) Nothing in this section applies to any loss suffered by any person as a result of the exercise of powers under this Act to implement a pest management strategy.
163 Protection of inspectors and others

An inspector, authorised person, accredited person, or other person who does any act or omits to do any act in pursuance of any of the functions, powers, or duties conferred on that person by or under this Act or a pest management strategy shall not be under any civil or criminal liability in respect of that act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

164 Liability for goods

The Crown shall not be under any civil liability in respect of any loss or damage to any goods suffered—

(a) while those goods are in the custody of the Crown by reason of the exercise, in good faith and with reasonable care, of authority under this Act; or

(b) as a result of or in the course of any treatment, handling, or quarantine of those goods undertaken or required in good faith and with reasonable care by an inspector or any other person acting in the exercise of authority under this Act.

164A Procedure for giving directions or making requirements

(1) A direction may be given or a requirement made under this Act by a written notice delivered—

(a) to a natural person,—

(i) by delivering the notice to the person; or

(ii) by delivering the notice to the person’s usual or last known place of residence or business; or

(iii) by sending the notice by pre-paid post to the person at the usual or last known place of residence or business of the person; or

(iv) by sending the notice by facsimile to the person’s usual or last known place of residence or business:

(b) to a body (whether incorporated or not),—

(i) by delivering the notice to an officer of the body; or

(ii) by delivering the notice to the usual or last known place of residence or business of an officer of the body; or

(iii) by sending the notice by pre-paid post to an officer of the body at the usual or last known place of residence or business of that person; or

(iv) by delivery of the notice to the registered office of the body; or

(v) by sending the notice by pre-paid post addressed to the body at the registered office of the body; or

(vi) by sending the notice by facsimile to the registered office of the body:

(c) to a partnership,—

(i) by delivering the notice to any one of the partners; or

(ii) by delivering the notice to the usual or last known place of residence or business of any one of the partners; or

(iii) by sending the notice by pre-paid post to any one of the partners at the usual or last known place of residence or business; or
New Zealand

residence or business of that person; or
(iv) by delivery of the notice to the usual or last known place of business of the partnership; or
(v) by sending the notice by pre-paid post addressed to the usual or last known place of business of the partnership; or
(vi) by sending the notice by facsimile to the usual or last known place of business of the partnership:
(d) to a Minister of the Crown,—
(i) by personal delivery to the chief executive of the appropriate department; or
(ii) by delivery to the head office of the appropriate department; or
(iii) by sending the notice by pre-paid post addressed to the head office of the appropriate department; or
(iv) by sending the notice by facsimile to the head office of the appropriate department.

(2) Where reasonable attempts have been made to find the occupier of a place and no occupier can be found, a written notice under this section may be delivered to the occupier of that place by affixing the notice in some conspicuous location in or on the place.

(3) Where a written notice is delivered in accordance with this section by post, the direction or requirement contained in the notice is deemed to be given or made at the time at which the notice would have been delivered in the ordinary course of the post in the absence of evidence to the contrary.

164B Application of section 164A
Section 164A—
(a) may, if the provisions of that section are consistent with a procedure specified in this Act for giving a direction or making a requirement, apply in addition to that procedure:
(b) may apply where this Act does not specify any procedure for giving any direction or making any requirement:
(c) does not require any direction to be given or requirement to be made in accordance with that section.

164C Registration of unwanted organisms
(1) Where a chief technical officer has formed the belief that makes an organism an unwanted organism, that chief technical officer must notify the Director-General that the organism is an unwanted organism.

(2) The Director-General must keep a register of all organisms notified to the Director-General in accordance with subsection (1).

(3) The register must be available for public information and inspection at the office of the Director-General during normal office hours.

(4) Where a chief technical officer fails to notify the Director-General in accordance with this section, that failure does not invalidate the chief technical officer’s belief
that makes the organism an unwanted organism.

165 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the manner and content of applications for permits, registrations, and approvals under this Act:

(b) prescribing procedures for the assessment, consideration, approval, and refusal of applications for permits, registrations, and approvals under this Act, and for the issue of such permits, registrations, and approvals:

(c) providing for and regulating the transfer, amendment, suspension, revocation, cancellation, or withdrawal of permits, registrations, and approvals issued under this Act:

(d) providing for and prescribing conditions that shall or may be attached to permits, registrations, approvals, and exemptions issued under this Act:

(e) requiring persons to whom or which section 43(2) applies (or any of them) to make returns of information to the Director-General:

(f) prescribing standards for places that are required to be designated, registered, or approved under this Act or the regulations:

(g) providing for the registration of places that are particularly liable to harbour pests or unwanted organisms or are difficult to monitor, or that may serve as an active source of pests or unwanted organisms:

(ga) prescribing technical standards for the construction, equipping, maintenance, and operation of places referred to in paragraph (g) whether required to be registered or not:

(h) prescribing standards relating to the operators of any of the places referred to in paragraphs (f) and (g):

(i) prescribing technical standards to be met by persons involved in the handling of diseased or pestiferous organic material:

(j) prohibiting or controlling the disposal of garbage and other waste organic material, and providing for controls to prevent access to it by animals:

(k) requiring the identification of, and prohibiting, regulating, or controlling the use of organic material including the prohibition or regulation of organic material as food for organisms:

(l) prescribing standards of technical competence, experience, and qualifications relating to the appointment of inspectors and authorised persons:

(m) prescribing procedures and standards, including requirements as to technical competence, experience, and qualifications, relating to the accreditation and appointment of accredited persons:

(n) prescribing procedures to be followed and standards to be met by inspectors, authorised persons, and other persons engaged in the exercise of powers and the performance of duties under this Act:

(o) prescribing procedures to be followed in the preparation and public notification of proposals for pest management strategies and in consultations with interested and other persons concerning those proposals:

(p) prescribing procedures to be followed and standards to be met by management agencies and persons acting on behalf of
management agencies in the implementation of pest management strategies:

(q) prescribing methods of implementing and enforcing standards prescribed under this Act:

(r) regulating and controlling the holding, disposal, and treatment of risk goods:

(ra) prescribing articles or substances which may be left on any place for the purpose of ascertaining the presence or absence of any pest or unwanted organism:

(s) prescribing matters in respect of which costs are recoverable under this Act and the regulations and any pest management strategy, the amounts of those costs or the method by which they are to be assessed, the persons liable for payment of the costs, and the circumstances in which the recovery of costs may be remitted or waived (in whole or in part):

(t) requiring the holders of permits, registrations, and approvals under this Act and persons engaged in prescribed activities to keep records and to provide copies of those records and other information (wherever held) to the Director-General or any other chief executive:

(u) [Repealed]

(v) prescribing offences in respect of the contravention of any regulation made under this Act or any lawful direction or requirement made under any such regulation:

(va) prescribing any offences against or under this Act as infringement offences:

(vb) specifying that an infringement offence is a border infringement offence if it is committed—

(i) in a biosecurity control area at a port approved as a place of first arrival under section 37; or

(ii) at a port approved for the arrival of a craft under section 37A:

(vc) prescribing the infringement fee payable for each infringement offence, which may not exceed $1,000:

(vd) prescribing the form of, and any additional particulars required in, an infringement notice for a border infringement offence or an infringement offence:

(w) prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of any of the provisions of Part 10; and, without limiting the generality of the preceding power, any such regulations may provide that, subject to such conditions as are specified in the regulations, specified provisions of this Act shall not apply, or specified provisions of Acts repealed or amended by this Act, or of regulations, Orders in Council, notices, licences, permits, approvals, authorisations, or consents made or given shall continue to apply during a specified transitional period:

(x) providing for such matters as may be contemplated by or necessary for giving full effect to this Act and for its administration.

(2) Before making any recommendation for the purposes of subsection (1), the responsible Minister must consult to the extent that is reasonably practicable, having regard to the circumstances of the particular case, such persons as the responsible Minister has reason to believe are representative of interests likely to be substantially affected by the regulations.
166 General provisions as to regulations

(1) Any regulation made under this Act may apply generally or may apply or be applied from time to time by the Minister by notice in the Gazette within any specified district or region of any local authority or within any specified part of New Zealand or may apply to any specified category or categories of persons.

(2) All regulations made under section 165(1)(w) that are still in force on the day that is 5 years after the commencement of section 165 shall expire at the close of that day.

(3) Any regulations made under this Act may confer power to issue directions, orders, requirements, permits, or notices for the purposes of this Act on all or any of the following:

(a) all Ministers, Ministers of a specified kind or description, or any specified Minister or Ministers:

(b) all chief executives, chief executives of a specified kind or description, or any specified chief executive or chief executives:

(c) all principal officers, principal officers of a specified kind or description, or any specified principal officer or principal officers:

(d) all chief technical officers, chief technical officers of a specified kind or description, or any specified chief technical officer or chief technical officers:

(e) all inspectors, or inspectors of a specified kind or description:

(f) all authorised persons, or authorised persons of a specified kind or description.

(4) Regulations made under this Act may authorise the Director-General to exempt—

(a) any conveyance; or

(b) conveyances of any kind or description; or

(c) any other place; or

(d) other places of any kind or description; or

(e) any person; or

(f) persons of any kind or description,— from any requirement of those regulations, or any other regulations made under this Act, if satisfied that, in the circumstances, the imposition of the requirement on that conveyance, those conveyances, that place, those places, that person, or those persons, is not necessary.

Schedule 1 ss 60(2), 76(2) [Repealed]

Schedule 2 ss 66, 80(1)

Board of inquiry procedure

1 Summary of submissions and notification
A board of inquiry shall in respect of a regional pest management strategy by publishing a notice in 1 or more daily newspapers circulating within the council’s region, or, in respect of a national pest management strategy, by publishing a notice in 1 or more of the daily newspapers circulating in the main metropolitan areas, publicly notify—
(a) a summary of submissions received by it on a proposed pest management strategy; and

(b) where those submissions can be inspected; and

(c) the address for service of the board of inquiry.

2 Hearing by board of inquiry

A board of inquiry shall—

(a) hold a hearing into submissions on a proposed pest management strategy; and

(b) publicly notify the dates, times, and places, where hearings will be held for a regional pest management strategy by publishing a notice in 1 or more of the daily newspapers circulating within the council’s region, or, in respect of a national pest management strategy, by publishing a notice in 1 or more of the daily newspapers circulating in the main metropolitan areas; and

(c) notify every person who made a submission and who requested to be heard, of the dates, times, and places of the hearings; and

(d) give at least 10 working days’ notice of every hearing to every person who made a submission and who requested to be heard.

3 Public hearings without unnecessary formality

(1) A board of inquiry shall hold the hearing in public unless permitted to do otherwise under clause 6 (which relates to the protection of sensitive information) and shall establish a procedure that is appropriate and fair in the circumstances.

(2) In determining an appropriate procedure for the purposes of subclause (1), the board of inquiry shall—

(a) avoid unnecessary formality; and

(b) recognise tikanga Maori where appropriate, and receive evidence written or spoken in Maori; and the Maori Language Act 1987 shall apply accordingly; and

(c) not permit any person other than the chairperson or other member of the board of inquiry to question any person making a submission or a witness; and

(d) not permit cross-examination.

4 Persons who may be heard

(1) At any hearing by a board of inquiry, every person who has made a submission and expressed a wish to be heard at the hearing may speak (either personally or through a representative) and call evidence.

(2) Notwithstanding subclause (1), a board of inquiry may, if it considers that there is likely to be excessive repetition, limit the circumstances in which persons having the same interest in a proposed strategy may speak or call evidence.

5 Provisions relating to hearings

(1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing conducted by a board of inquiry appointed under this Act:

(a) section 4, which gives power to maintain order:

(b) section 4B, which relates to evidence:

(c) section 4D, which gives power to summon witnesses:
(d) section 5, which relates to the service of a summons:
(e) section 6, which relates to the protection of witnesses:
(f) section 7, which relates to allowances for witnesses.

(2) Every summons to a witness to appear at a hearing shall be in the prescribed form and be signed by the chairperson of the hearing.

(3) All allowances for a witness shall be paid for by the person on whose behalf the witness is called.

6 Protection of sensitive information

(1) A board of inquiry may, of its own motion or on the application of a person making a submission to a proceeding, make an order described in subclause

(2) where it is satisfied that the order is necessary—

(a) to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu; or
(b) to avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information,—

and, in the circumstances of the particular proceeding, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.

(2) A board of inquiry may make an order for the purpose of subclause (1)—

(a) that the whole or part of any hearing at which the information is likely to be referred to shall be held with the public excluded (which order shall, for the purposes of subsections (3) to (5) of section 48 of the Local Government Official Information and Meetings Act 1987, be deemed to be a resolution passed under that section):
(b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceeding, whether or not the information may be material to any inquiry.

(3) An order made under subclause (2)(b) in relation to—

(a) any matter described in subclause (1)(a) may be expressed to have effect from the commencement of any proceeding to which it relates and for an indefinite period or until such date as the board of inquiry considers appropriate in the circumstances:
(b) any matter described in subclause (1)(b) may be expressed to have effect from the commencement of any proceeding to which it relates but shall cease to have any effect at the conclusion of that proceeding—and upon the date that such order ceases to have effect, the provisions of the Local Government Official Information and Meetings Act 1987 shall apply accordingly in respect of any information that was the subject of any such order.

(4) In this clause, information includes any document or evidence.
Biosecurity Law Reform Bill

Government Bill

256—1

(Introduced to Parliament, 10 December, 2010)

Explanatory note

General policy statement

This Bill is an omnibus Bill that amends the Biosecurity Act 1993, the Maritime Transport Act 1994, the Ombudsmen Act 1975, the Wild Animal Control Act 1977, and the Wildlife Act 1953. It is intended that the Bill will be divided into two separate Bills at the committee of the whole House stage.

Biosecurity is critical to New Zealand’s prosperity and way of life. More than any other developed country, New Zealand depends on the success of its primary industries and the biosecurity system that underpins them. The biosecurity system also protects the native plants and animals and other resources that are taonga to Maori and precious to all New Zealanders.

The Biosecurity Act needs to be updated to allow the biosecurity system to respond to an increasingly challenging environment. Globalisation and changes in transport technologies have resulted in greater and more rapid trade and travel and the development of new trade and travel routes. While this is positive for New Zealand’s economy, it exposes us to greater and more complex biosecurity risk.

The Bill will result in:

- more effective and efficient risk management
- clearer roles and responsibilities, and improved collaboration and partnerships
- ability to handle future change.

More effective and efficient risk management
Biosecurity interventions need to target areas of greatest risk, and at points where they will have best effect. Greater use should be made of technology and intelligence, and operational systems should be streamlined.

The Bill provides a framework that allows the Ministry of Agriculture and Forestry (MAF) to focus its resources at the border on the passengers, baggage, cargo and mail that pose the greatest risk, rather than applying the same approach to everything. The Bill provides MAF with improved powers to require information in advance of arrival in New Zealand, and sets out a clear framework for the retention and use of information for risk profiling.

An important part of moving to a more streamlined and targeted approach at the border is to ensure that adequate sanctions are available to deal with cases where non-compliance is detected. The Bill makes a number of enhancements to the mechanisms that are available to deal with non-compliance. These include introducing a new compliance order mechanism, and clarifying which offences under the Act are strict liability offences.

One area where the effectiveness of the Biosecurity Act needs to be improved is in the management of risks to the marine environment. Several amendments in the Bill are included for this purpose. The Bill extends the application of the Biosecurity Act into the Exclusive Economic Zone, in a manner that is consistent with the United Nations Convention on the Law of the Sea. The Bill also introduces a new instrument, the craft risk management standard, which will set out the biosecurity requirements that craft arriving in New Zealand must meet.

Amendments to the Maritime Transport Act 1994 are also made for the purpose of managing the biosecurity risks from craft. These amendments focus on the biosecurity risks from ballast water, and will enable New Zealand to ratify the International Convention for the Control and Management of Ships’ Ballast Water and Sediments.

Within New Zealand, there will always be calls to manage a greater number of established harmful organisms. We need to make sure that we are managing the right organisms in the best possible way, and that activities are aligned where necessary. The Bill will allow the Minister to establish a National Policy Direction to do this.

The Bill alters the current position of the Crown in relation to regional pest management strategies. The Crown is not currently required to abide by these strategies – this can result in pests spilling over onto neighbouring land, and reduce the effectiveness of pest management in a region. The Bill will require the Crown to meet “good neighbour” rules within regional pest management plans, ensuring that they are more effective.
The Bill will also allow national and regional pest management plans to be more efficiently developed, and allow the development of plans at national and regional levels to address the movement of harmful organisms along pathways. These changes will improve the efficiency and effectiveness of pest management.

Related amendments to two other Acts will help to improve the effective management of some pests. The Bill amends the scope of the Wild Animal Control Act 1977 so that possums and wallabies can be managed solely under the Biosecurity Act, without regional councils having to comply with additional requirements in the Wild Animal Control Act 1977. Similarly, the Bill will amend the Wildlife Act 1953, with the effect that pest birds can be managed solely under the Biosecurity Act.

**Clearer roles and responsibilities, and improved collaboration and partnerships**

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

New Zealand’s biosecurity cannot be the responsibility of central Government alone. Local government, the trade and travel industry, domestic industries with natural resource interests, and other stakeholders all have roles to play. The Biosecurity Act should enable partnerships and co-operation between these players, both at the border and within New Zealand.

In the border area, the current system places too much weight on MAF inspection, and not enough on good risk management practices by importers. The Bill creates specific duties for importers to encourage them to proactively manage the biosecurity risk posed by their goods. The Bill also provides a clearer statement of what is expected from the operators of transitional facilities, which are places where imported goods are taken for purposes such as inspection and treatment.

The Bill will also allow MAF to enter into an agreement with industry groups that provides for joint decision-making and cost sharing for preparing for, and responding to, harmful organisms that enter New Zealand. Joint decision-making and cost sharing will allow industry expertise to be more readily brought to the decision-making table, and will ensure that industry’s priorities for expenditure are made clearer.
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In addition, the Bill’s provisions for improved pest management planning processes will provide tools to better allow industries to manage the organisms that affect them and that have become established in New Zealand. This raises a related issue where an industry organisation becomes a management agency under the Biosecurity Act and can exercise significant statutory powers. It is clear that a management agency meets the Legislation Advisory Committee guidelines on the coverage of the Ombudsmen Act 1975 and Official Information legislation. The Bill will amend the Ombudsmen Act so that, where a body corporate is exercising powers through a pest or pathway management plan as a management agency, it will be subject to the Ombudsmen Act and therefore the Official Information Act 1982.

Ability to handle future change

Biosecurity risk management has been significantly modernised in recent times and further significant improvements will be wanted in the future. The Bill aims to take a broad rather than narrow focus, and to be enabling rather than prescriptive – thus avoiding locking in current practices and priorities.

The Bill will ensure that MAF can use electronic systems across the biosecurity system. This will enable MAF to make greater use of electronic technology, and allow a move in the future to the automation of certain biosecurity functions.

The Bill will also provide more flexible processes for reviewing and amending pest management tools (including pest management plans and pathway management plans). This will allow programmes to be readily adjusted to reflect changes in the environment, available information and priorities.
Biosecurity Law Reform Bill

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Biosecurity Law Reform Bill

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Biosecurity Law Reform Act 2010.

2 Commencement

(1) Section 19 and Part 2 come into force on the date appointed by the Governor-General by an Order in Council.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Biosecurity Act 1993

3 Principal Act amended

This Part amends the Biosecurity Act 1993.

4 Interpretation

(1) This section amends section 2.

(2) The following paragraph is added to the definition of arrive in New Zealand:

“(d) in relation to goods, means to reach land within New Zealand territory after a flight or voyage originating outside New Zealand territory”

(3) The definition of craft is repealed and the following definition substituted:

“craft means—

“(a) an aircraft, ship, boat, or other machine or vessel used or able to be used for the transport of people or goods, or both, by air or sea; and

“(b) includes—

“(i) an oil rig; and

“(ii) a structure or installation that is imported by being towed through the sea”.

(4) The definition of exclusive economic zone is repealed.

(5) The definition of import is repealed and the following definition substituted:

“import is defined in section 2A”.

(6) The definition of import health standard is repealed and the following definition substituted:

“import health standard has the meaning given to it by section 22”.

or voyage originating outside New Zealand territory”

(3) The definition of craft is repealed and the following definition substituted:
(7) The definition of **management agency** is repealed and the following definition substituted:

“**management agency** means the body specified as the management agency in a pest management plan or a pathway management plan”.

(8) The definition of **Minister** is repealed and the following definition substituted:

“**Minister** means a Minister of the Crown”.

(9) The definition of **organic material** is repealed and the following definition substituted:

“**organic material** means material to which all the following apply:

“(a) it—

“(i) is derived from an organism; or
“(ii) is an excretion or secretion of an organism; or
“(iii) contains material derived from an organism; or
“(iv) contains an excretion or secretion of an organism; and

“(b) it—

“(i) may or may not contain material derived from a human being; and
“(ii) may or may not contain the secretions of a human being; and

“(c) it—

“(i) is not cardboard, coal, paper, petroleum oil, a substance derived from coal, or a substance derived from petroleum oil; and
“(ii) is not material purporting to be organic on the basis only that it contains cardboard, coal, paper, petroleum oil, a substance derived from coal, or a substance derived from petroleum oil”.

(10) The definition of **pest** is amended by omitting “strategy” and substituting “plan”.

(11) The definition of “**pest management strategy** and strategy” is repealed and the following definition substituted:

“**pest management plan** means a plan to which the following apply:

“(a) it is for the eradication or effective management of a particular pest or pests:
“(b) it is made under **Part 5**:
“(c) it may be a national pest management plan or a
The definition of rule is amended by omitting “strategy in accordance with section 69B or section 80B” and substituting “plan or a pathway management plan”.

The definition of small-scale management programme is amended by omitting “section 100” and substituting “section 100Q”.

The definition of unauthorised goods is amended by inserting the following paragraphs after paragraph (c):

“(ca) goods that—

“(i) are subject to post-clearance requirements in an import health standard; and

“(ii) do not comply with the requirements; or

“(cb) goods that—

“(i) are subject to post-clearance conditions under section 27A; and

“(ii) do not comply with the conditions; or

“(cc) goods that—

“(i) are subject to regulations made under section 165(4); and

“(ii) do not comply with the regulations; or”.

The following definitions are inserted in their appropriate alphabetical order:

“accredited person means a person currently accredited under section 103(7)

“auditor, in sections 105C to 105F, means a person appointed an auditor under section 105B

“automated electronic system means a system that is the subject of an arrangement under section 142F

“biosecurity database means the database established under section 142A

“compliance order means an order made under section 154

“craft risk management plan means a plan approved under section 22AF

“craft risk management standard means a standard issued under section 22AD

“effects, in sections 12A and 12B and Part 5, —

“(a) include the following, regardless of scale,
intensity, duration, or frequency:

“(i) a positive or adverse effect; and
“(ii) a temporary or permanent effect; and
“(iii) a past, present, or future effect; and
“(iv) a cumulative effect that arises over time or in combination with other effects; and

“(b) also include the following:

“(i) a potential effect of high probability; and
“(ii) a potential effect of low probability that has a high potential impact

“facility operator” means a person approved under section 40

“good neighbour rule” means a rule to which the following apply:

“(a) it applies to an occupier of land and to a pest or pest agent that is present on the land; and
“(b) it seeks to manage the spread of a pest that would cause costs to occupiers of adjacent land; and

“(c) it is identified in a regional pest management plan as a good neighbour rule; and
“(d) it complies with the directions in the national policy direction relating to the setting of good neighbour rules

“independent review panel” means a panel established under section 22A

“law, in section 154N, means—
“(a) this Act:
“(b) regulations:
“(c) a pest management plan:
“(d) a pathway management plan:
“(e) a declaration of emergency under section 144

“national policy direction” means the direction approved under section 57

“official” means—
“(a) the Director-General:
“(b) an inspector:
“(c) an authorised person:
“(d) an assistant of an inspector:
“(e) an assistant of an authorised person:
“(f) a chief technical officer:
“(g) a person appointed an auditor under section 105B

“pathway" means movement that—

“(a) is of goods or craft out of, into, or through—

“(i) a particular place in New Zealand; or

“(ii) a particular kind of place in New Zealand; and

“(b) has the potential to spread harmful organisms

“pathway management plan" means a plan to which the following apply:

“(a) it is for the prevention or management of the spread of harmful organisms:

“(b) it is made under Part 5:

“(c) it may be a national pathway management plan or a regional pathway management plan

“producer" means a person in the business of producing or using animals or plants

“SPS Agreement" means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures

“written or in writing" means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax, email, or other electronic means”.

(16) Section 2(2) and (3) are repealed.

5 New sections 2A and 2B inserted

The following sections are inserted after section 2:

“2A Interpretation of import

“(1) In this Act, import means to bring within New Zealand territory from outside the territory. Grammatical forms of import have a corresponding meaning.

“(2) In this Act, importation means bringing within New Zealand territory from outside the territory.

“(3) In this Act, importer—

“(a) means a person who imports goods; and

“(b) includes—

“(i) a person for whom goods are imported; and

“(ii) the New Zealand agent of an overseas-based person who arranged the importation of goods; and

“(iii) the New Zealand-based representative of an overseas-based person who arranged the importation of goods; and

“(iv) the New Zealand-based consignee of imported goods.

“2B Interpretation of specified in relation to organisms
For the purposes of this Act, an organism may be specified by 1 or both of the following:

“(a) its scientific name:
“(b) the name of a disease it causes.”

6 Application of Act to syndromes of uncertain origin
Section 3(2) is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

7 Section 4 substituted
Section 4 is repealed and the following section substituted:

“4 Application of Act in territorial sea
A provision in this Act that applies in the territorial sea must be interpreted in a way that preserves the rights of vessels of other states to engage in innocent passage through the territorial sea or transit passage through straits used for international navigation as set out in the United Nations Convention on the Law of the Sea of 10 December 1982.”

8 Section 5 substituted
Section 5 is repealed and the following section substituted:

“5 Act binds the Crown
“(1) This Act binds the Crown, except as described in subsection (2).
“(2) A regional pest management plan binds the Crown to the extent provided in section 68(5) and a regional pathway management plan binds the Crown to the extent provided in section 86(5).”

9 Land may include parts of boundary roads
(1) Section 6(1) is amended by omitting “any pest management strategy applies to land adjoining a road, that strategy may state that the land includes, for the purposes of the strategy” and substituting “a pest management plan or a pathway management plan applies to land adjoining a road, the plan may state that the land includes, for the purposes of the plan”.

(2) Section 6(2) is amended by omitting “any pest management strategy to do anything on or in relation to land, where the pest management strategy” and substituting “a pest management plan or a pathway management plan to do anything on or in relation to land, when the plan”.

10 Powers of responsible Minister
(1) Section 9(1)(b) is repealed.

Section 9(1) is amended by inserting the following paragraphs after paragraph (c):

“(ca) assign responsibility for decisions under section 55:
“(cb) recommend to the Governor-General the approval of the national policy direction under section 57:
“(cc) recommend to the Governor-General the approval of amendments to the national policy direction under section 58(1):
“(cd) approve amendments to the national policy direction under section 58(2):
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“(ce) recommend to the Governor-General the approval of the revocation and replacement of the national policy direction under section 58(3):”.

Section 9(2) is amended by omitting “(a), (c), (d), and (e)”.

11 Section 10 substituted

Section 10 is repealed and the following section substituted:

“10 Functions of Ministers in relation to national plans

“(1) Any Minister may carry out the functions specified in Part 5 as the functions of a Minister.

“(2) Any Minister may carry out the functions of—

“(a) approving the preparation of a national pest management plan under section 64(1):

“(b) recommending to the Governor-General the making of an Order in Council making a national pest management plan under section 65(1):

“(c) approving the preparation of a national pathway management plan under section 82(1):

“(d) recommending to the Governor-General the making of an Order in Council making a national pathway management plan under section 83(1):

“(e) appointing a management agency for a plan under section 96(3):

“(f) disallowing an operational plan or part of it under section 98(4):

“(g) reviewing, amending, revoking and replacing, or revoking a plan under section 100:

“(h) recommending to the Governor-General the making of an Order in Council imposing a levy under section 100G(1):

“(3) No Minister may delegate the carrying out of the functions in subsection (2) to a person other than another Minister.”

12 Responsible Minister may require information

Section 12(1) is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

13 New cross headings and sections 12A and 12B inserted

The cross heading after section 12 is repealed and the following sections and cross headings are inserted after section 12: “Director-General

“12A Director-General provides overall leadership

“(1) The Director-General provides overall leadership in activities that prevent, reduce, or eliminate adverse effects from harmful organisms that are established in New Zealand (pest management).

“(2) The ways in which the Director-General provides leadership include—

“(a) promoting alignment of pest management within the whole biosecurity system:

“(b) overseeing New Zealand’s systems for pest management and
measuring overall system performance:

“(c) facilitating the development and alignment of national pest management plans and national pathway management plans:

“(d) promoting public support for pest management:

“(e) facilitating communication, co-operation, and co-ordination of those involved in pest management to enhance effectiveness, efficiency, and equity of programmes.

“Local authorities

“12B Regional council provides leadership regionally

“(1) A regional council provides leadership in activities that prevent, reduce, or eliminate adverse effects from harmful organisms that are established in New Zealand (pest management) in its region.

“(2) The ways in which the regional council provides leadership in the region include—

“(a) promoting the optimal contribution of pest management to relevant community and national strategies:

“(b) facilitating communication and co-operation between those involved in pest management to enhance effectiveness, efficiency, and equity of programmes.

“(3) A regional council also provides leadership by promoting co-ordination of pest management between regions.”

14 Powers of regional councils

(1) Section 13(1)(a) to (f) are repealed and the following paragraphs substituted:

“(a) cause to be carried out, for the purposes of Part 5,—

“(i) monitoring to determine whether or not pests, pest agents, and unwanted organisms are present; and

“(ii) surveillance of pests, pest agents, and unwanted organisms:

“(b) provide, in accordance with relevant pest management plans, for the assessment and eradication or management of pests:

“(c) prepare proposals for, make, and implement regional pest management plans and regional pathway management plans:

“(d) appoint a management agency for a plan under section 96(3):

“(e) disallow an operational plan or part of it under section 98(4):

“(f) review, amend, revoke and replace, or revoke a plan under section 100:

“(fa) declare and implement small-scale management programmes under section 100Q.”

(2) Section 13(2) is repealed and the following subsection substituted:

“(2) Regional councils have all the powers of territorial authorities set out in section 14.”

15 Powers of territorial authorities
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(1) Section 14(b) is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

Section 14(c) is amended by omitting “any pest management strategy” and substituting “a pest management plan or a pathway management plan”.

Section 14(d)(i) is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

Section 14(d)(ii) is amended by omitting “strategy” and substituting “plan”.

Section 14(da) is amended by omitting “any national pest management strategy” and substituting “a national pest management plan or a national pathway management plan”.

Section 14(da) is amended by omitting “that strategy” and substituting “the plan”.

16 Transfer of powers, etc., by local authorities

(1) Section 15(1)(b) is amended by omitting “strategy” and substituting “plan or a national pathway management plan”.

Section 15(1)(c) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”.

Section 15(2)(a) is amended by omitting “notifying or making any regional pest management strategy under Part 5 of this Act” and substituting “making a regional pest management plan or a regional pathway management plan under Part 5”.

17 Sections 16 to 16B substituted

Section 16 is repealed and the following sections are substituted:

“16 Purpose of Part 3

The purpose of this Part is to provide for the effective management of risks associated with—

“(a) the importation of risk goods:

“(b) the entry of craft into New Zealand territory.

“16A General duty relating to importation

A person must not, in connection with the importation of goods,—

“(a) provide an official or an automated electronic system with false, misleading, or incomplete information; or

“(b) take steps to hinder the detection of the goods by an official.

“16B Duties of importers

“(1) An importer of risk goods must take all reasonable steps to ensure that the goods comply with applicable import health standards.

“(2) An importer of goods must not leave the goods in a biosecurity control area, transitional facility, or place approved under section 37. For the purposes of this subsection, leaving goods—

“(a) means leaving them in a way or for a period that would entitle an inspector or authorised person to regard the goods, under section 119(2), as abandoned; and

“(b) does not mean putting them into a bin provided by the Ministry for the purpose of having imported goods left in it.
“(3) An importer who imports goods in the course of trade must keep records of the movement of the goods by or for the importer.

“(4) An importer who imports goods and disposes of them in the course of trade to another person other than by retail sale must keep records of—

“(a) the name and contact details of the person to whom the goods are disposed of; and

“(b) the place at which the goods are disposed of; and

“(c) the name and contact details of the carrier, if any, used to transport the goods to the person.

“(5) An importer to whom subsection (3) or (4) applies must—

“(a) keep the records for 4 years from the date on which the goods are imported; and

“(b) make the records available to an inspector if an inspector asks to see them during the period that the importer must keep them.

“(6) Regulations may specify—

“(a) the class or description of importer to whom subsection (3) or (4) applies:

“(b) the class or description of information that the importer must keep in the records:

“(c) a period of less than 4 years for which the importer must keep the records.”

Section 17 is repealed and the following section substituted:

“17 Notice of craft’s intended arrival in New Zealand

“Craft to which section applies

“(1) This section applies to a craft that is en route to New Zealand territory from a point outside New Zealand territory on a flight or voyage that is intended to include arrival in New Zealand.

“Meaning of approved port

“(2) The craft must arrive in New Zealand at 1 of the following approved ports if it is possible and practicable to do so:

“(a) a port of entry approved under this Act as a place of first arrival for craft of all kinds and craft arriving for all purposes:

“(b) a port of entry approved under this Act as a place of first arrival suitable for the craft and, if relevant, for the purpose for which it is arriving:

“(c) a port approved under section 37A for the arrival of the craft.

“Persons who carry out duties

“(3) The duties in subsections (6), (7), (9), and (10) must be carried out by the person who is in charge of the craft.

“(4) The following persons may carry out the duties on behalf of the person who is in charge of the craft:

“(a) an owner of the craft:

18 Section 17 substituted
“(b) an operator of the craft:
“(c) an agent of an owner of the craft:
“(d) an agent of an operator of the craft.

“Form and manner of notices
“(5) The person who is carrying out the duties must give notices under this section in the form and manner—
“(a) approved by the Director-General; and
“(b) advised on an internet site maintained by or on behalf of the Ministry.

“First notice
“(6) The person must give the Director-General notice of the following matters from a point outside New Zealand territory:
“(a) when and where, approximately, the craft will enter New Zealand territory; and
“(b) in relation to the craft’s arrival in New Zealand,—
“(i) the approved port at which it is intended that the craft will arrive; or
“(ii) if it is impossible or impracticable to go to an approved port, the destination at which it is intended that the craft will arrive.

“(7) After giving notice under subsection (6), the person must ensure that the craft goes directly to, and arrives in New Zealand at, the notified port or destination.

“Second notice
“(8) Subsections (9) and (10) apply when—
“(a) the person has given the notice; and
“(b) the craft has not subsequently arrived in New Zealand; and
“(c) the person learns that it is now impossible or impracticable to go to the port or destination stated in the notice.

“(9) The person must give the Director-General notice of the following matters:
“(a) where, approximately, the craft is; and
“(b) when and where, approximately, the craft will enter New Zealand territory; and
“(c) in relation to the craft’s arrival in New Zealand,—
“(i) the approved port at which it is now intended that the craft will arrive, if it is possible and practicable to go to an approved port; or
“(ii) the destination at which it is now intended that the craft will arrive, if it is impossible or
impracticable to go to an approved port.

“(10) After giving notice under subsection (9), the person must ensure that the craft goes directly to, and arrives in New Zealand at, the port or destination.

“Regulations may elaborate duties

“(11) Regulations may—

“(a) require that a notice contain details of a craft's previous voyages, current voyage, and future intended voyages within New Zealand territory:

“(b) require that a notice contain the details about the following that are specified in the regulations:

“(i) the craft's crew:

“(ii) the craft's passengers:

“(iii) goods on board the craft:

“(c) specify the length of time before a craft's arrival in New Zealand at which the notice must be given:

“(d) require that a notice—

“(i) give different information about the matters depending on the class or description of the craft:

“(ii) give the information at different times depending on the class or description of the craft:

“(e) provide for the Director-General to require the giving of the information earlier than the time specified in the regulations if—

“(i) an emergency or an urgent situation has arisen; and

“(ii) the emergency or the urgent situation creates a risk of significant economic or environmental loss or harm; and

“(iii) the earlier giving of the information is necessary to avoid or mitigate the risk.”

19 Arrival of craft in New Zealand

Section 18 is amended by adding the following subsections:

“(3) The person is deemed to have an inspector's permission to discharge ballast water into New Zealand waters if the person has complied with the applicable one of the following:

“(a) if conditions have been imposed on the person in accordance with section 246A of the Maritime Transport Act 1994, the conditions:

“(b) if conditions have not been imposed on the person in accordance with section 246A of the Maritime Transport Act 1994, rules made under section 388(n) of that Act.

“(4) In subsection (3), ballast water and New Zealand waters have the meanings
20 Sections 22 to 22AF and cross heading substituted

Section 22 is repealed and the following sections and cross heading are substituted:

“22 Meaning of import health standard

“(1) An import health standard specifies requirements to be met for the effective management of risks associated with importing risk goods, including risks arising because importing the goods involves or might involve an incidentally imported new organism.

“(2) An import health standard may include 1 or both of the following:

“(a) pre-clearance requirements, which apply before risk goods may be imported, moved from a biosecurity control area or a transitional facility, or given a biosecurity clearance:

“(b) post-clearance requirements, which apply after risk goods are given a biosecurity clearance.

“(3) An import health standard must do the following:

“(a) specify the class or description of goods to which it applies; and

“(b) specify that it applies to goods of a class or description imported from—

“(i) a country or countries specified; or

“(ii) countries of a class or description specified; or

“(iii) a location or locations specified; or

“(iv) all countries.

“(4) An import health standard may specify requirements in any appropriate manner, including, but not limited to, 1 or more of the following:

“(a) measures to be applied to the goods before or after arrival in New Zealand:

“(b) evidence or information to be provided about the measures:

“(c) outcome to be achieved:

“(d) criteria to determine whether an outcome has been achieved.

“(5) An import health standard may specify—

“(a) information that the importer of goods to which the standard applies must provide to the Director-General:

“(b) the period before the goods' arrival in New Zealand by which the importer must provide the information:

“(c) the form of a declaration in which the importer must provide the information.

“(6) Post-clearance requirements in an import health standard may also specify the following:
“(a) the class or description of persons to whom the requirements apply:

“(b) on the use of the goods,—

“(i) the use to which they must be put; or

“(ii) the restrictions or conditions on their use:

“(c) the duration of the requirements:

“(d) any other matters reasonably necessary for the effective implementation of the requirements.

“22AA Process

“Chief technical officer’s role

“(1) A chief technical officer may recommend that the Director-General issue, amend, or revoke an import health standard.

“(2) Before making a recommendation, the chief technical officer must consult—

“(a) the chief executive of every department whose responsibilities for natural resources or human health may be adversely affected by the issue, amendment, or revocation; and

“(b) any other persons the chief technical officer considers to be representative of the classes of persons having an interest in the issue, amendment, or revocation.

“(3) The chief technical officer must consult on—

“(a) a draft of the import health standard; or

“(b) a document analysing or assessing the risks associated with the class or description of goods.

“(4) Subsections (2) and (3) do not apply if the chief technical officer considers that—

“(a) the standard needs to be issued, amended, or revoked urgently; or

“(b) a proposed amendment is minor.

“(5) When formulating a recommendation, the chief technical officer—

“(a) must have regard to the following matters in relation to goods of the class or description proposed for coverage by the import health standard:

“(i) the likelihood that the goods will import organisms:

“(ii) the nature of the organisms that the goods may import:

“(iii) the effect on persons, the New Zealand environment, and the New Zealand economy of the organisms that the goods may import:

“(iv) New Zealand’s obligations under international agreements other than the SPS Agreement:
“(v) any other matters that the chief technical officer considers relevant to achieving the purpose of this Part; and

“(b) must be satisfied that the requirements proposed for inclusion in the import health standard are consistent with New Zealand’s obligations under the SPS Agreement; and

“(c) must have regard to the following matters in relation to goods of the class or description proposed for coverage by the import health standard and the requirements proposed for inclusion in the standard:

“(i) the extent to which the requirements reduce or manage the likelihood of adverse effects from organisms that may be imported on the goods:

“(ii) the extent to which the requirements reduce or manage the impacts of adverse effects from organisms that may be imported on the goods:

“(d) may have regard to the following matters in relation to goods of the class or description proposed for coverage by the import health standard and the requirements proposed for inclusion in the standard:

“(i) the direct cost of the requirements on importers and the government:

“(ii) other economic factors, and the technical and operational factors, involved in implementing the requirements; and

“(e) must ensure, in relation to post-clearance requirements proposed for inclusion in the standard, that—

“(i) there is an identifiable class of persons who will be subject to the requirements; and

“(ii) it is reasonably practicable to notify the persons who will be subject to the requirements about the requirements.

“Independent review panel’s role

“(6) If an independent review panel reports to the Director-General, the Director-General must, as soon as reasonably practicable,—

“(a) take the panel’s findings and recommendations into account; and

“(b) determine the issue in dispute; and

“(c) give reasons for the determination.

“Director-General’s role
“(7) The Director-General may issue, amend, or revoke an import health standard after receiving the chief technical officer's recommendation.

“(8) The Director-General is not obliged to issue an import health standard for goods of a particular class or description if the Director-General considers that the requirements that could be imposed in the standard would not be sufficient to enable the purpose of this Part to be achieved.

“22AB Facilitating compliance

“(1) The Director-General must maintain a register of import health standards.

“(2) The register must be available for the public to read free of charge—

“(a) at the office of the Director-General during normal office hours; or

“(b) on an internet site maintained by or on behalf of the Ministry.

“(3) The Director-General may issue a permit that an import health standard specifies as a requirement if the Director-General considers it appropriate to do so.

“(4) A person to whose goods post-clearance requirements in an import health standard apply must take all reasonable steps to comply with the standard.

“Craft risk management standards

“22AC Meaning of craft risk management standard

“(1) A craft risk management standard specifies requirements to be met for the effective management of risks associated with the entry of craft into New Zealand territory.

“(2) A craft risk management standard—

“(a) must specify the class or description of craft to which it applies;

“(b) may specify the class or description of activity to which it applies.

“(3) A craft risk management standard must specify that—

“(a) it applies to the risks specified in the standard; or

“(b) it applies to all risks except those managed under another enactment; or

“(c) it applies to all risks.

“(4) A craft risk management standard may specify requirements for craft—

“(a) entering New Zealand territory;

“(b) arriving in New Zealand;

“(c) while they remain in New Zealand territory.

“(5) A craft risk management standard may specify requirements in any appropriate manner, including, but not limited to, 1 or more of the following:
“(a) measures to be applied:
“(b) evidence or information to be provided about the measures:
“(c) outcome to be achieved:
“(d) criteria to determine whether an outcome has been achieved.
“(6) A craft risk management standard may specify—
“(a) information and records that must be provided to the Director-General:
“(b) the period before the craft’s arrival in New Zealand by which the information and records must be provided:
“(c) the form of a declaration in which the information and records must be provided.

“22AD Process

“Chief technical officer’s role
“(1) A chief technical officer may recommend that the Director-General issue, amend, or revoke a craft risk management standard.
“(2) Before making a recommendation, the chief technical officer must consult—
“(a) the chief executive of every department whose responsibilities for natural resources or human health may be adversely affected by the issue, amendment, or revocation; and
“(b) any other persons the chief technical officer considers to be representative of the classes of persons having an interest in the issue, amendment, or revocation.
“(3) The chief technical officer must consult on—
“(a) a draft of the craft risk management standard; or
“(b) a document analysing or assessing the risks associated with the class or description of craft.
“(4) Subsections (2) and (3) do not apply if the chief technical officer considers that—
“(a) the standard needs to be issued, amended, or revoked urgently; or
“(b) a proposed amendment is minor.
“(5) When formulating a recommendation about a craft risk management standard, the chief technical officer—
“(a) must have regard to the following matters in relation to craft of the class or description proposed for coverage by the standard:
“(i) the likelihood that the craft will import organisms into New Zealand territory:
“(ii) the nature of the organisms that the craft may import into New Zealand territory:
“(iii) the effect on persons, the New Zealand
environment, and the New Zealand economy of the organisms that the craft may import into New Zealand territory:

“(iv) New Zealand's obligations under international agreements:

“(v) any other matters that the chief technical officer considers relevant to achieving the purpose of this Part; and

“(b) must have regard to the following matters in relation to craft of the class or description proposed for coverage by the craft risk management standard and the requirements proposed for inclusion in the standard:

“(i) the extent to which the requirements reduce or manage the likelihood of adverse effects from organisms that may be imported in or on the craft:

“(ii) the extent to which the requirements reduce or manage the impacts of adverse effects from organisms that may be imported in or on the craft;

and

“(c) may have regard to the following matters in relation to craft of the class or description proposed for coverage by the craft risk management standard and the requirements proposed for inclusion in the standard:

“(i) the direct cost of the requirements on owners or operators, or the persons in charge, of craft and the government:

“(ii) other economic factors, and the technical and operational factors, involved in implementing the requirements.

“Director-General's role

“(6) The Director-General may issue, amend, or revoke a craft risk management standard after receiving the chief technical officer's recommendation.

“22AE Facilitating compliance

“(1) The Director-General must maintain a register of current craft risk management standards.

“(2) The register must be available for the public to read free of charge—

“(a) at the office of the Director-General during normal office hours; or

“(b) on an internet site maintained by or on behalf of the Ministry.

“(3) An operator, or the person in charge, of a craft to which a craft risk management standard applies must—

“(a) take all reasonable steps to comply with the standard; and

“(b) provide a declaration to an inspector setting out the steps taken to comply
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with the standard, if an inspector requires the person to do so.

“22AF Craft risk management plans

“(1) This section applies if a person—
“(a) is an owner or an operator, or the person in charge, of a craft; and
“(b) wants to operate under a craft risk management plan containing requirements that are equivalent to but different from those specified in the applicable craft risk management standard.

“(2) The person must—
“(a) make the plan; and
“(b) submit it to the Director-General for approval.

“(3) The Director-General may approve the plan if satisfied that the risks can be managed under the plan to the same extent as, or a greater extent than, they can be managed under the applicable craft risk management standard.

“(4) The Director-General must include in the approval of the plan a statement of the class or description of activity to which it applies.

“(5) The Director-General may include in the approval of the plan a statement of the period for which the approval is valid.

“(6) If the Director-General ceases to be satisfied under subsection (3), the Director-General may—
“(a) withdraw the approval; or
“(b) follow the following process:
“(i) the Director-General tells the person which aspects of the plan have ceased to satisfy the Director-General; and
“(ii) the person may submit draft amendments to the Director-General; and
“(iii) the Director-General may approve the draft amendments or require other amendments; and
“(iv) the Director-General may withdraw approval of the plan if it is not amended to the Director-General’s satisfaction.

“(7) Throughout the period that the plan has the approval of the Director-General, a person who complies with the plan for an activity to which the plan applies does not have to comply also with the applicable craft risk management standard for the activity.

“(8) An operator, or the person in charge, of a craft to which a craft risk management plan applies must—
“(a) comply with the plan; and
“(b) provide a declaration to an inspector setting out the steps taken to comply with the plan, if an inspector requires the person to do so.”

21 Process for independent review panel to be established

Section 22A(1) is amended by omitting “section 22(6)” and substituting “section 22AA(2)(b)”.

22 Goods to be cleared for entry into New Zealand

Section 25(2) and (3) are repealed and the following subsections substituted:
“(2) A person may cause or permit uncleared goods that are in a transitional facility or biosecurity control area to leave the facility or area only if subsection (3) or (4) applies.
“(3) Uncleared goods that are in a transitional facility or biosecurity control area may leave the facility or area to be exported from New Zealand, if an inspector authorises their export.
“(4) Uncleared goods that are in a transitional facility or biosecurity control area may leave the facility or area if an inspector authorises their movement to another transitional facility or biosecurity control area or a containment facility.
“(5) An authorisation may—
“(a) specify how the goods are to be moved:
“(b) specify a time period within which the goods must be moved:
“(c) specify how the goods are to be dealt with at their destination.
“(6) An authorisation may impose conditions.
“(7) An authorisation may be given to—
“(a) a facility operator:
“(b) a person in charge of the goods in any capacity at a particular time:
“(c) another person in charge of the goods in any capacity at the same or a later time:
“(d) a person in possession of the goods at a particular time:
“(e) another person in possession of the goods at the same or a later time.
“(8) A person to whom an inspector gives an authorisation must—
“(a) act within its terms; and
“(b) take all reasonable steps to ensure that other persons act within its terms.”

23 Section 26 substituted

Section 26 is repealed and the following section substituted:

“26 Clearances by inspectors
“(1) An inspector may give a clearance for the entry into New Zealand of goods that meet the requirements in section 27.
“(2) An inspector may not give a clearance for the entry into New Zealand of goods that meet the requirements in section 27.”
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Zealand of goods contrary to section 28."

24 Sections 27 and 27A substituted

Section 27 is repealed and the following sections are substituted:

"27 Requirements for clearances"

"(1) An inspector may give a clearance for goods if he or she—

"(a) is satisfied that the goods are not risk goods; and

"(b) is not aware of circumstances or documents associated with the goods, the importation of the goods, or the craft on which the goods were imported that makes it unwise for them to be given a clearance.

"(2) An inspector may give a clearance for goods if he or she—

"(a) is satisfied that—

"(i) the goods are of a kind that would not usually be considered as risk goods; and

"(ii) the goods may harbour or contain a harmful organism; and

"(iii) a chief technical officer has issued guidelines, or given directions, on measures to take to manage the risks from the organism effectively; and

"(iv) the measures have been properly applied; and

"(b) is not aware of circumstances or documents associated with the goods, the importation of the goods, or the craft on which the goods were imported that makes it unwise for them to be given a clearance.

"(3) An inspector may give a clearance for goods if he or she—

"(a) is satisfied that—

"(i) the goods are risk good; and

"(ii) the goods comply with the pre-clearance requirements in an applicable import health standard; and

"(b) is not aware of circumstances or documents associated with the goods, the importation of the goods, or the craft on which the goods were imported that makes it unwise for them to be given a clearance.

"(4) An inspector may give a clearance for goods if he or she—

"(a) is satisfied that—

"(i) the goods are risk goods; and

"(ii) the goods do not comply with the pre-clearance requirements in an applicable import health standard; and

"(iii) a chief technical officer has issued guidelines, or given directions, on measures, different from those in the import health
standard, to take to manage effectively risks of the kind arising from the non-compliance; and

“(iv) the measures have been properly applied; and

“(b) is not aware of circumstances or documents associated with the goods, the importation of the goods, or the craft on which the goods were imported that makes it unwise for them to be given a clearance.

“27A Post-clearance conditions on clearances

“(1) An inspector who gives a biosecurity clearance under section 26 may impose post-clearance conditions on the goods.

“(2) The inspector may impose only such conditions as are approved by a chief technical officer specifically or generally.

“(3) A chief technical officer must not approve conditions that are inconsistent with relevant post-clearance requirements of an applicable import health standard.

“(4) The conditions may,—

“(a) on the use of the goods, specify—

“(i) the use to which they must be put; or

“(ii) the restrictions or conditions on their use:

“(b) specify how the goods must be managed or disposed of:

“(c) specify the place or area within which the goods must be kept, managed, or used:

“(d) require notification of a change in circumstances that affects the goods:

“(e) require reporting to an inspector or another specified person in specified circumstances on specified matters:

“(f) specify how long a condition lasts by reference to a period of time, a date, or an event:

“(g) deal with any other matters reasonably necessary for the effective management of the risks associated with the goods.”

25 Section 28B substituted

Section 28B is repealed and the following section substituted:

“28B Biosecurity clearance for certain new organisms and qualifying organisms

Section 28 does not apply to organisms approved under the following sections of the Hazardous Substances and New Organisms Act 1996:

“(a) section 38BA:

“(b) section 38C:

“(c) section 38I:

“(d) section 48:

“(e) section 49F.”

26 Uncleared imports
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Section 30(1) is repealed and the following subsections are substituted:

“(1) An inspector may require a person arriving in New Zealand to surrender to an inspector uncleared imported risk goods that the person has in his or her possession or under his or her control.

“(1A) The purpose for which the inspector may exercise the power in subsection (1) is to enable the goods to be disposed of under this Act.

“(1B) An inspector may require a person arriving in New Zealand to make a declaration about 1 or more of the following in a manner specified by the inspector:

“(a) the person's name:
“(b) the person's date of birth:
“(c) the person's nationality:
“(d) the person's country of birth:
“(e) the person's occupation:
“(f) the person's passport number:
“(g) any evidence of identity that the person has that is not a passport:
“(h) the person's residential address and contact details:
“(i) where and when the person has travelled before and where and when the person will travel in future:
“(j) whether the person has goods of a kind specified in the declaration in his or her possession, including as part of his or her personal effects or baggage:
“(k) the place where goods of a kind specified in the declaration were acquired:
“(l) the origin of goods of a kind specified in the declaration:
“(m) details of the flight or voyage on which the person arrived in New Zealand.”

27 Processing unaccompanied goods

Section 30A(2) and (3) are repealed and the following subsections substituted:

“(2) An inspector may enter a transitional facility or biosecurity control area for the purposes of subsection (1), but must do so—

“(a) at a reasonable time or times; and
“(b) in the manner required by section 112.

“(3) Subsections (4) to (9) apply to goods in a transitional facility or biosecurity control area that—

“(a) are risk goods; or
“(b) contain risk goods; or
“(c) are unauthorised goods; or
“(d) contain unauthorised goods.

“(4) A chief technical officer may give directions that—

“(a) may apply to the particular goods or to goods of their kind:
“(b) may be about disposal, treatment, or any other dealing:
“(c) must be reasonable.
“(5) An official must comply with the chief technical officer’s directions.

“(6) A chief technical officer may offer the importer or owner of the goods the option of exporting the goods or returning them to their place of origin at the importer’s or owner’s expense.

“(7) A chief technical officer may—

“(a) permit the goods to be held in the Director-General’s custody for as long as is necessary for the importer to obtain a biosecurity clearance:

“(b) require payment in advance of the estimated costs and expenses of the custody and maintenance of the goods.

“(8) A chief technical officer exercising powers under any of subsections (4), (6), or (7) must, as far as practicable, act in a manner that is consistent with avoiding or minimising loss to the importer or owner of the goods while achieving the purpose of this Part.

“(9) If the goods in a transitional facility or biosecurity control area are an endangered species, as defined in section 3 of the Trade in Endangered Species Act 1989, a chief technical officer must—

“(a) consult the Director-General of Conservation about the disposal of the goods; and

“(b) dispose of the goods as the chief technical officer thinks fit.”

28 Boarding of craft

Section 31(1) is amended by repealing paragraph (d) and substituting the following paragraphs:

“(d) by all reasonable means, facilitate the boarding of the craft by an inspector; and

“(e) by all reasonable means, facilitate the inspection of the craft, including the outside of the hull, by an inspector.”

29 Sections 35 and 35A substituted

Section 35 is repealed and the following sections are substituted:

“35 Duties of persons in biosecurity control areas

“(1) A person in a biosecurity control area must answer all questions asked by an inspector about—

“(a) the person’s identity:

“(b) the person’s residential address and contact details:

“(c) the presence, nature, origin, or itinerary of goods in the person’s possession or under his or her immediate control:

“(d) any other matter on which the inspector requires information.

“(2) The purpose for which the inspector may ask for information under subsection (1)(d) is to exercise a power or carry out a function or duty under this Part.

“(3) A person in a biosecurity control area must, if asked to do so by an inspector, provide the inspector with the person’s passport
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or any evidence of identity that the person has that is not a passport.

“(4) An inspector to whom a passport or evidence of identity is provided under subsection (3)—

“(a) may take a copy; and
“(b) may keep the copy for a lawful purpose; and
“(c) must return the passport or evidence immediately after—

“(i) inspecting it; or
“(ii) inspecting and copying it.

“(5) A person in a biosecurity control area must, if asked to do so by an inspector, make available to an inspector goods in the person’s possession or under his or her immediate control.

“(6) The purpose for which an inspector may make a request under subsection (5) is to enable an inspector to examine the goods to ascertain whether or not risk goods are present.

“(7) A person in a biosecurity control area must comply with a reasonable direction of an inspector in relation to risk goods.

“35A Duty of persons to remain in biosecurity control areas

“(1) This section applies to a person in a biosecurity control area who has arrived in New Zealand.

“(2) The person must remain in the area until the person’s arrival in New Zealand is processed by the taking of whichever of the following steps are relevant:

“(a) consideration by an officer authorised under the Customs and Excise Act 1996 or Immigration Act 2009 of the applicability to the person of powers or duties in the Act or Acts:
“(b) a request by an inspector that an officer not present at the area consider exercising a particular power, or carrying out a particular duty, in the Act or Acts that the inspector considers—

“(i) may be applicable to the person; and
“(ii) may not be exercised or carried out by an officer present; and
“(iii) may be exercised or carried out by the officer to whom the request is made:
“(c) the lapse of time following the request that is reasonable to allow a response from the officer to whom the request is made:
“(d) the exercise of a particular power, or the carrying out of a particular duty, in the Act or Acts in response to the request if the requested officer decides to exercise the power or carry out the duty:
“(e) the exercise, as far as practicable, in the area of the powers under the Act or Acts that are required to be exercised in the area:
“(f) the carrying out, as far as practicable, in the area of the duties under the Act or Acts that are required to be carried out in the area:

“(g) compliance by the person with all obligations imposed on him or her under the Act or Acts relating to his or her arrival in New Zealand.

“(3) An inspector may direct a person to comply with the person's duties under this section.”

30 Movement of risk goods

Section 36 is amended by omitting “or wants to move”.

31 Approval of transitional facilities and containment facilities

(1) The heading of section 39 is repealed and the heading Approval and cancellation of approval of transitional facilities and containment facilities substituted.

(2) Section 39(1) is repealed and the following subsections are substituted:

“(1) The Director-General may approve standards for building, maintaining, or operating transitional facilities.

“(1A) The Director-General must consult the persons the Director-General considers representative of the classes of persons likely to have an interest in a proposed standard before approving the standard.

Section 39 is amended by inserting the following subsection after subsection (3):

“(3A) The Director-General may approve the place as a transitional facility on conditions that the Director-General considers necessary or desirable.”

Section 39(7) is amended by omitting “operator of a transitional facility, or a containment facility” and substituting “facility operator”.

32 Approval of facility operators

(1) The heading of section 40 is repealed and the heading Approval and cancellation of approval of facility operators substituted.

(2) Section 40(3) is repealed and the following subsections are substituted:

“(3) The Director-General must consider every application made under subsection (1).

“(3A) In considering an application, the Director-General may take the matters in subsection (3B) into account in relation to—

“(a) the applicant; and

“(b) a director or manager of the applicant; and

“(c) an organisation of which the applicant is or was a director or manager.

“(3B) The matters are—

“(a) a serious or repeated failure to comply in the past with a duty imposed by this Act on a facility operator:

“(b) a conviction for an offence against this Act, the Customs and Excise Act 1996, the Hazardous Substances and New Organisms Act 1996, or any
other enactment that regulates the importation of goods:

“(c) a conviction in New Zealand or another country for an offence relating to fraud or dishonesty:

“(d) a conviction in New Zealand or another country for an offence relating to a business of a kind that is regulated under this Act or any other enactment administered by the Ministry and involving—

“(i) management control in New Zealand or another country:

“(ii) business activities in New Zealand or another country:

“(e) any circumstances that could lead to a failure to comply in the future with a duty imposed by this Act on a facility operator.

“(3C) The Director-General may approve the applicant as a facility operator if satisfied that the applicant—

“(a) is a fit and proper person to be the operator of the transitional facility or containment facility specified in the application; and

“(b) is able to comply with the operating standards for the facility.

“(3D) The Director-General may approve the applicant as a facility operator—

“(a) on the condition that the operator will comply with applicable standards; and

“(b) on any other conditions that the Director-General considers necessary or desirable.”

(3) Section 40(4) is amended by inserting “and whether or not the Director-General has suspended the person’s approval under section 40A,” after “to a person,”.

(4) Section 40(6) is repealed and the following subsection substituted:

“(6) A facility operator must comply with—

“(a) all the conditions of the facility approval and the operator approval; and

“(b) all directions given by an inspector relating to goods held at the facility; and

“(c) all restrictions relating to the release of goods held at the facility communicated to the operator by an inspector.”

33 New sections 40A to 40F inserted

The following sections are inserted after section 40:

“40A Suspension of facility approval

“(1) The Director-General may suspend an approval given under section 39 if the Director-General has reasonable grounds to believe that an applicable standard has not been complied with.

“(2) The maximum period of the suspension is 3 months.
“(3) The Director-General may extend the period of a suspension if the Director-General has reasonable grounds to believe that the non-compliance with the applicable standard has not been rectified.

“(4) The period of extension must not exceed 3 months.

“(5) The Director-General must lift a suspension or extension before its period ends if the Director-General has reasonable grounds to believe that the non-compliance occasioning the suspension has been rectified.

“(6) In exercising a power under subsections (1) to (5), the Director-General must observe the rules of natural justice.

“(7) The maximum total period of suspension under this section is 6 months.

“(8) At the end of the maximum total period of suspension, the Director-General may cancel the approval if the Director-General has reasonable grounds to believe that the non-compliance occasioning the suspension has not been rectified.

“40B Notice requirements

“(1) If the Director-General suspends an approval under section 40A(1), the Director-General must give written notice to the facility operator.

“(2) The Director-General must give the notice before the suspension takes effect.

“(3) The notice must specify—

“(a) the reason for the suspension; and

“(b) the period of the suspension; and

“(c) the date on which, or the date and time at which, the suspension starts; and

“(d) the steps to be taken to enable the suspension to be lifted.

“(4) If the Director-General extends the period of suspension under section 40A(3), the Director-General must give written notice to the facility operator.

“(5) The Director-General must give the notice before the expiry of the original suspension.

“(6) The notice must specify—

“(a) the reason for the extension; and

“(b) the period of the extension; and

“(c) the date on which, or the date and time at which, the extension starts; and

“(d) the steps to be taken to enable the extension to be lifted.

“40C Effect of suspension and extension

“(1) When a suspension or extension is imposed under section 40A, the Director-General, a chief technical officer, or an inspector may give reasonable directions as to the disposal of, treatment of, or any other dealing with the goods held at the facility.

“(2) The suspension or extension does not affect any other actions that the Director-General, a chief technical officer, or an inspector may take under this Act.
Section 40D Suspension of operator approval

“(1) The Director-General may suspend an approval given under section 40 if the Director-General has reasonable grounds to believe that—

“(a) the facility operator has not complied with section 40(6); or

“(b) the facility operator has committed an offence under section 154M(18).

“(2) The maximum period of the suspension is 3 months.

“(3) The Director-General may extend the period of a suspension if the Director-General has reasonable grounds to believe that the conduct occasioning the suspension has not been rectified.

“(4) The period of extension must not exceed 3 months.

“(5) The Director-General must lift a suspension or extension before its period ends if the Director-General has reasonable grounds to believe that the conduct occasioning the suspension has been rectified.

“(6) In exercising a power under subsections (1) to (5), the Director-General must observe the rules of natural justice.

“(7) The maximum total period of suspension under this section is 6 months.

“(8) At the end of the maximum total period of suspension, the Director-General may cancel the approval if the Director-General has reasonable grounds to believe that the non-compliance occasioning the suspension has not been rectified.

Section 40E Notice requirements

“(1) If the Director-General suspends an approval under section 40D(1), the Director-General must give written notice to the facility operator.

“(2) The Director-General must give the notice before the suspension takes effect.

“(3) The notice must specify—

“(a) the reason for the suspension; and

“(b) the period of the suspension; and

“(c) the date on which, or the date and time at which, the suspension starts; and

“(d) the steps to be taken to enable the suspension to be lifted.

“(4) If the Director-General extends the period of suspension under section 40D(3), the Director-General must give notice before the expiry of the original suspension.

“(5) The Director-General must give the notice before the expiry of the original suspension.

“(6) The notice must specify—

“(a) the reason for the extension; and

“(b) the period of the extension; and

“(c) the date on which, or the date and time at which, extension starts; and

“(d) the steps to be taken to enable the extension to be lifted.
“40F Effect of suspension and extension

“(1) When a suspension or extension is imposed under section 40D, the Director-General, a chief technical officer, or an inspector may give reasonable directions as to the disposal of, treatment of, or any other dealing with the goods held at the facility.

“(2) The suspension or extension does not affect any other actions that the Director-General, a chief technical officer, or an inspector may take under this Act.”

34 Purpose of Part 4

Section 42 is amended by omitting “strategies” from each place where it appears and substituting “plans or pathway management plans” in each place.

35 Notifiable organisms

Section 45(3) is amended by omitting “strategy” and substituting “plan”.

36 Communication of pest or notifiable organism

(1) The heading of section 52 is amended by omitting “notifiable” and substituting “unwanted”.

Section 52(a) is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

37 Parts 5 and 5A substituted

Part 5 is omitted and the following Parts are substituted:

Part 5 - Pest management

“54 Purpose of this Part

The purpose of this Part is to provide for the eradication or effective management of harmful organisms that have established in New Zealand by providing for—

“(a) the development of effective and efficient instruments and measures that prevent, reduce, or eliminate the adverse effects of harmful organisms on economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga; and

“(b) the appropriate distribution of costs associated with the instruments and measures.”

“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
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“(b) in exceptional circumstances, the Minister may extend the time; and
“(c) the department or regional council must make the decision within the time or extended time.

“Policy direction

“56 Responsible Minister provides leadership through national policy direction

“(1) The responsible Minister must make a national policy direction. It is to be the only national policy direction, but it may be amended or revoked and replaced.

“Purpose

“(2) The purpose of the national policy direction is to ensure that pest management activities provide the best use of available resources for New Zealand’s best interests and align with one another, when necessary, to contribute to the achievement of the purposes of this Part.

“Good neighbour rules

“(3) The national policy direction must contain directions on the setting of good neighbour rules in regional pest management plans.

“Directions

“(4) The national policy direction may include directions on—
“(a) the outcomes that instruments and measures under this Part contribute to:
“(b) principles for decision-making:
“(c) how to achieve appropriate consistency—
“(i) among instruments under this Part; and
“(ii) between instruments under this Part and instruments in other legislation:
“(d) the circumstances in which it is appropriate to use instruments and measures under this Part:
“(e) the circumstances in which it is appropriate to review a pest management decision:
“(f) when and how to move the responsibility for a pest or pathway issue from one person to another:
“(g) the time after the national policy direction is made or amended within which plans must be reviewed, which it may express as a time period or a time guideline:
“(h) an appropriate consultation process for an instrument under this Part:
“(i) setting appropriate objectives for instruments under this Part:
“(j) setting appropriate measures or rules to achieve the objectives, including the circumstances in which it is appropriate to issue an exemption to a rule:
“(k) setting requirements on monitoring or measuring progress against objectives:
“(l) setting requirements on reporting on the extent to which an instrument under this Part achieves its objective:
“(m) setting the appropriate distribution of costs and benefits:
“(n) any other matter that the responsible Minister considers necessary.

“(5) Before including a direction under subsection (4), the Minister must have regard to the extent to which the direction is likely to—
“(a) achieve the purpose of this Part and of the national policy direction:
“(b) affect the flexibility of instruments and measures under this Part:
“(c) affect the timeliness of decisions made under this Part:
“(d) improve national consistency between instruments made under this Part:
“(e) affect the extent to which communities of interest retain decision-making autonomy:
“(f) affect the accountability of decision-makers to their community of interest.

“57 Process for making national policy direction

“(1) The responsible Minister must prepare a proposed national policy direction (proposal).
“(2) After preparing the proposal, the Minister must establish, and then use, a process that—
“(a) the Minister is satisfied gives the public adequate time and opportunity to make a submission on the proposal; and
“(b) requires a report and recommendations to be made to the Minister on the submissions and the subject matter of the proposal.
“(3) When the Minister receives the report and recommendations, the Minister must consider them.
“(4) The Minister may then—
“(a) make changes that the Minister considers appropriate to the proposal or decide to make no changes to it; or
“(b) withdraw all or part of the proposal and give public notice of the withdrawal, stating in the notice the reasons for the withdrawal.
“(5) When the Minister has made appropriate changes to the proposal or decided to make no changes to it, the Minister must recommend the approval of the national policy direction to the Governor-General in Council.
“(6) The Governor-General in Council may approve the national policy direction.
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“(7) As soon as practicable after the Governor-General in Council has approved the national policy direction, the Minister must—

“(a) publish a notice in the Gazette stating that the direction has been approved; and

“(b) publicly notify the direction in whatever form he or she thinks appropriate; and

“(c) send a copy of the direction to every management agency and regional council.

“(8) The national policy direction—

“(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and

“(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

58 Process for amending or revoking and replacing national policy direction

“(1) If the national policy direction is to be amended in a way that the Minister considers would materially affect the purposes of the direction, the Minister must—

“(a) prepare the proposed amendment; and

“(b) apply the process in section 57(2) to (7) to the proposed amendment.

“(2) If the national policy direction is to be amended in a way that the Minister does not consider would materially affect the purposes of the direction, the Minister must—

“(a) approve the amendment; and

“(b) publish a notice in the Gazette stating that the amendment has been approved; and

“(c) publicly notify the amendment in whatever form he or she thinks appropriate; and

“(d) send a copy of the amendment to every management agency and regional council.

“(3) If the national policy direction is to be revoked and replaced, the Minister must follow the process in section 57(1) to (7).

“(4) An amendment under subsection (1) or (2) or a replacement direction under subsection (3)—

“(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and

“(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

Pest management plans

National pest management plans

59 Definitions for sections 60 to 66

For the purposes of sections 60 to 66,—

“management agency means a management agency responsible for implementing a national pest management plan
“plan” means a national pest management plan.

“proposal” means a proposal for a national pest management plan.

“rule” means a rule in a national pest management plan.

60 Relationship of rules and plan with law

“(1) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.

“(2) If a plan imposes obligations and costs on the Crown, the Crown must comply with the obligations and meet the costs.

61 Plan initiated by proposal

“(1) The making of a plan is initiated by a proposal made by—

“(a) a Minister; or

“(b) a person who submits the proposal to a Minister.

“(2) The proposal must set out the following matters:

“(a) the name of the person making the proposal;

“(b) the subject of the proposal, which means—

“(i) the organism or organisms to which the proposal applies; or

“(ii) the class or description of organism or organisms to which the proposal applies;

“(c) for each subject,—

“(i) a description of its adverse effects;

“(ii) the reasons for proposing a plan;

“(iii) the objectives that the plan would have;

“(iv) the principal measures that would be in the plan to achieve the objectives;

“(v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives;

“(vi) the reasons why a national plan is more appropriate than a regional plan;

“(vii) an analysis of the benefits and costs of the proposed plan;

“(viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the proposed plan:
“(ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:

“(x) the rationale for the proposed allocation of costs:

“(xi) if it is proposed that the plan be funded by a levy under section 100G, how the proposed levy satisfies section 100G(5)(d) and what matters will be specified under section 100I(1):

“(xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the proposed plan requires to pay the costs:

“(d) any other organism intended to be controlled:

“(e) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—

“(i) economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga:

“(ii) the marketing overseas of New Zealand products:

“(f) if the proposed plan would affect another pest management plan or a pathway management plan, how it is proposed to coordinate the implementation of the plans:

“(g) the powers in Part 6 that it is proposed to use to implement the plan:

“(h) the intended scope and purpose of each proposed rule:

“(i) the rules whose contravention is proposed to be an offence under this Act:

“(j) the management agency:

“(k) the means by which it is proposed to measure the
achievement of the plan's objectives:

“(l) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:

“(m) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the proposed plan:

“(n) information on the disposal of the proceeds of any receipts arising in the course of implementing the proposed plan:

“(o) whether the proposed plan includes portions of road adjoining land it covers, as authorised by section 6, and if so, the portions of road proposed to be included:

“(p) the anticipated costs of implementing the proposed plan:

“(q) how it is proposed that the costs be funded:

“(r) the period for which it is proposed the plan be in force:

“(s) the consultation, if any, that has occurred on the proposal and the outcome of it.

“62 Requirements to proceed with plan

“(1) This section sets out the matters on which the Minister must be satisfied before the Minister acts under section 64.

“(2) The Minister must be satisfied that the proposal—

“(a) is not frivolous or vexatious; and

“(b) is clear enough to be readily understood; and

“(c) is not inconsistent with the national policy direction; and

“(d) has merit as a means of eradicating or effectively managing the subject of the plan, which means—

“(i) the organism or organisms to which the proposal applies; or

“(ii) the class or description of organism or organisms to which the proposal applies; and

“(e) complies with section 61(2).

“(3) The Minister must be satisfied that each subject is capable of causing at some time an adverse effect on 1 or more of the following in New Zealand:

“(a) economic wellbeing;

“(b) the viability of threatened species of organisms;

“(c) the survival and distribution of indigenous plants or animals;

“(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;

“(e) soil resources:
“(f) water quality:
“(g) human health:
“(h) the enjoyment of the recreational value of the natural environment:
“(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga.
“(4) The Minister must be satisfied that—
“(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
“(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan—
“(i) will accrue, as a group, benefits outweighing the costs; or
“(ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
“(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years.
“(5) The Minister must be satisfied that the implementation of the proposed plan would not be contrary to New Zealand’s international obligations.
“(6) The Minister must be satisfied that, if the Minister rejected a similar proposal within the last 3 years, new and material information is now available.
“(7) The Minister must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there are any, were complied with.
“(8) The Minister must be satisfied that, during the development of the proposal,—
“(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and
“(b) local authorities whose responsibilities may be affected by the proposed plan were consulted; and
“(c) the tangata whenua of the area who may be affected by the proposed plan were consulted through iwi authorities and tribal runanga.
“(9) The Minister must be satisfied that, if consultation with other persons was appropriate during the development of the proposal, sufficient consultation occurred.

63 Consultation on proposal
“(1) In considering whether the Minister is satisfied as required by section 62(9),
the Minister must have regard to the following:

“(a) the scale of the impacts on persons who are likely to be affected by the proposal:

“(b) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation:

“(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.

“(2) Subsections (3) and (4) apply if the Minister is not satisfied as required by section 62(9).

“(3) The Minister may require consultation to be undertaken on the proposal.

“(4) If the Minister requires consultation to be undertaken, the Minister must determine the way or ways in which the consultation is to be undertaken, including, but not limited to, ways such as—

“(a) consultation with persons likely to be affected by the proposal or with their representatives:

“(b) the appointment by the Minister of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the Minister:

“(c) public notification of the proposal and the receipt of submissions.

“64 Contents of plan

“(1) When the Minister is satisfied of the matters in section 62, the Minister may approve the preparation of a plan.

“Matters to be specified

“(2) A plan must specify the following matters:

“(a) the pest or pests to be eradicated or managed:

“(b) the objectives of the plan:

“(c) the principal measures to be taken to achieve the objectives:

“(d) the means by which the achievement of the plan's objectives will be measured:

“(e) the sources of funding for the implementation of the plan:

“(f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:

“(g) the powers in Part 6 to be used to implement the plan:

“(h) the rules, if any:

“(i) the management agency:

“(j) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:

“(k) the portions of road, if any, adjoining land covered by the plan and, as authorised by
(l) the plan’s commencement date and termination date.

Compensation

(3) A plan—

(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:

(b) must not provide for the payment of compensation for the following losses:

(i) loss suffered because a person’s income derived from feral or wild organisms is adversely affected by the implementation of the plan:

(ii) loss suffered before an inspector or authorised person establishes the presence of the pest on the place of the person suffering the loss:

(iii) loss suffered by a person who fails to comply with the plan.

Rules

(4) A plan may include rules for all or any of the following purposes:

(a) requiring a person to take specified actions to enable the management agency to determine or monitor the presence or distribution of the pest or a pest agent:

(b) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:

(c) requiring the identification of specified goods:

(d) prohibiting or regulating specified methods that may be used in managing the pest:

(e) prohibiting or regulating activities that may affect measures taken to implement the plan:

(f) requiring audits or inspections of specified actions:

(g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:

(h) requiring the occupier of a place to take specified actions to eradicate or manage the pest or a specified pest agent on the place:

(i) requiring the occupier of a place to take specified actions to eradicate or manage the habitat of the pest or the habitat of a specified pest agent on the place:

(j) prohibiting or regulating specified activities by the occupier of a place if the activities are of the kind that
would promote the habitat of the pest on the place:

“(k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on the place:

“(l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:

“(m) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of the pest:

“(n) requiring the owners or persons in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:

“(o) requiring the destruction of goods if the goods may contain or harbour the pest or otherwise pose a risk of spreading the pest:

“(p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:

“(s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.

“(5) A rule may—

“(a) apply generally or to different classes or descriptions of persons, places, goods, or other things:

“(b) apply all the time or at a specified time of the year:

“(c) apply throughout New Zealand or in a specified part or parts of New Zealand, with, if necessary, another rule on the same subject matter applying to another specified part of New Zealand:

“(d) provide that no exemptions from the rule may be granted under section 66:

“(e) specify that a contravention of the rule creates an offence under section 154M(19).

“(6) If the plan includes rules, the Minister must have regard to the extent to which each rule is likely—

“(a) to assist in achieving the objectives of the plan; and

“(b) to restrict the rights of individuals.

“(7) The Minister may decide not to include a rule in the plan if the Minister considers that the rule—
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“(a) is unlikely to assist in achieving the objectives of the plan; or
“(b) is likely to trespass unduly on the rights of individuals.

“65 Making of plan

“(1) When the Minister is satisfied with the contents of a plan prepared under section 64, the Minister may recommend to the Governor-General that an Order in Council be made making the plan.

“(2) The order is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

“66 Exemptions from rules

“(1) The Minister may exempt a person from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.

“(2) The Minister may grant an exemption under subsection (1) only if—

“(a) the Minister is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and
“(b) the Minister is satisfied that 1 or more of the following applies:

“(i) the requirement has been substantially complied with and further compliance is unnecessary:
“(ii) the action taken on, or provision made for, the matter to which

the requirement relates is as effective or more effective than compliance with the requirement:
“(iii) the requirement is clearly unreasonable or inappropriate in the particular case:
“(iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case; and
“(c) the rule does not prohibit the granting of exemptions from it.

“(3) The Minister may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or things from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.

“(4) The Minister may grant an exemption under subsection (3) only if—

“(a) the Minister is satisfied that events have occurred that make the requirement unnecessary or inappropriate; and
“(b) the rule does not prohibit the granting of exemptions from it.

“(5) As soon as practicable after granting an exemption, the Minister must notify the nature of the grant in the Gazette.
“67 Definitions for sections 68 to 76

For the purposes of sections 68 to 76,—

“council” means a regional council

“management agency” means a management agency responsible for implementing a regional pest management plan

“plan” means a regional pest management plan

“proposal” means a proposal for a regional pest management plan

“rule” means a rule in a regional pest management plan.

“68 Relationship of rules with law

“(1) To the extent to which a regulation made under this or any other Act is inconsistent with a rule, the regulation prevails.

“(2) To the extent to which a rule in a national pest management plan is inconsistent with a rule, the rule in the national pest management plan prevails.

“(3) To the extent to which a rule in a national pathway management plan is inconsistent with a rule, the rule in the national pathway management plan prevails.

“(4) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.

“(5) A good neighbour rule may impose obligations and costs on the Crown and no other rule may impose obligations or costs on the Crown.

“69 Plan initiated by proposal

“(1) The making of a plan is initiated by a proposal made by—

“(a) the council; or

“(b) a person who submits the proposal to the council.

“(2) The proposal must set out the following matters:

“(a) the name of the person making the proposal:

“(b) the subject of the proposal, which means—

“(i) the organism or organisms to which the proposal applies:

“(ii) the class or description of organism or organisms to which the proposal applies:

“(c) for each subject,—

“(i) a description of its adverse effects:

“(ii) the reasons for proposing a plan:

“(iii) the objectives that the plan would have:

“(iv) the principal measures that would be in the plan to achieve the objectives:

“(v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are
preferable as a means of achieving the objectives:

“(vi) the reasons why the plan is more appropriate than relying on voluntary actions:

“(vii) an analysis of the benefits and costs of the proposed plan:

“(viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the proposed plan:

“(ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:

“(x) the rationale for the proposed allocation of costs:

“(xi) if it is proposed that the plan be funded by a levy under section 100G, how the proposed levy satisfies section 100G(5)(d) and what matters will be specified under section 100I(1):

“(xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the proposed plan requires to pay the costs:

“(d) any other organism intended to be controlled:

“(e) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—

“(i) economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga:

“(ii) the marketing overseas of New Zealand products:

“(f) if the proposed plan would affect another pest management plan or a pathway management plan, how it is proposed to co-ordinate the implementation of the plans:

“(g) the powers in Part 6 that it is proposed to use to implement the plan:

“(h) the intended scope and purpose of each proposed rule:

“(i) the rules, if any, that are intended to be good neighbour rules:
“(j) the rules whose contravention is proposed to be an offence under this Act:

“(k) the management agency:

“(l) the means by which it is proposed to measure the achievement of the plan’s objectives:

“(m) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:

“(n) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the proposed plan:

“(o) information on the disposal of the proceeds of any receipts arising in the course of implementing the proposed plan:

“(p) whether the proposed plan includes portions of road adjoining land it covers, as authorised by section 6, and if so, the portions of road proposed to be included:

“(q) the anticipated costs of implementing the proposed plan:

“(r) how it is proposed that the costs be funded:

“(s) the period for which it is proposed the plan be in force:

“(t) the consultation, if any, that has occurred on the proposal and the outcome of it.

“70 Requirements to proceed with plan

“(1) This section sets out the matters on which the council must be satisfied before the council acts under section 72.

“(2) The council must be satisfied that the proposal—

“(a) is not frivolous or vexatious; and

“(b) is clear enough to be readily understood; and

“(c) is not inconsistent with—

“(i) the national policy direction; or

“(ii) any other pest management plan on the same organism; or

“(iii) any pathway management plan; or

“(iv) any regulations; or

“(v) a regional policy statement or regional plan prepared under the Resource Management Act 1991; and

“(d) has merit as a means of eradicating or effectively managing the subject of the plan, which means—

“(i) the organism or organisms to which the proposal applies; or

“(ii) the class or description of organism
“(e) complies with section 69(2).

“(3) The council must be satisfied that each subject is capable of causing at some time an adverse effect on 1 or more of the following in the region:

“(a) economic wellbeing;
“(b) the viability of threatened species of organisms;
“(c) the survival and distribution of indigenous plants or animals:
“(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity:
“(e) soil resources:
“(f) water quality:
“(g) human health:
“(h) the enjoyment of the recreational value of the natural environment:
“(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga.

“(4) The council must be satisfied that—

“(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
“(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan—

“(i) will accrue, as a group, benefits outweighing the costs; or
“(ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and

“(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years.

“(5) The council must be satisfied that, if the council rejected a similar proposal within the last 3 years, new and material information is now available.

“(6) The council must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there are any, were complied with.

“(7) The council must be satisfied that, during the development of the proposal,—

“(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and
“(b) local authorities whose responsibilities may be affected
by the proposed plan were consulted; and

“(c) the tangata whenua of the area who may be affected by the proposed plan were consulted through iwi authorities and tribal runanga.

“(8) The council must be satisfied that, if consultation with other persons was appropriate during the development of the proposal, sufficient consultation occurred.

“71 Consultation on proposal

“(1) In considering whether the council is satisfied as required by section 70(8), the council must have regard to the following:

“(a) the scale of the impacts on persons who are likely to be affected by the proposal;

“(b) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation:

“(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.

“(2) Subsections (3) and (4) apply if the council is not satisfied as required by section 70(8).

“(3) The council may require consultation to be undertaken on the proposal.

“(4) If the council requires consultation to be undertaken, the council must determine the way or ways in which the consultation is to be undertaken, including, but not limited to, ways as—

“(a) consultation with persons likely to be affected by the proposal or with their representatives:

“(b) the appointment by the council of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the council:

“(c) public notification of the proposal and the receipt of submissions.

“72 Contents of plan

“(1) When the council is satisfied of the matters in section 70, the council may approve the preparation of a plan.

“Matters to be specified

“(2) A plan must specify the following matters:

“(a) the pest or pests to be eradicated or managed:

“(b) the objectives of the plan:

“(c) the principal measures to be taken to achieve the objectives:

“(d) the means by which the achievement of the plan’s objectives will be measured:

“(e) the sources of funding for the implementation of the plan:

“(f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
“(g) the powers in Part 6 to be used to implement the plan:
“(h) the rules, if any:
“(i) the rules, if any, that are good neighbour rules:
“(j) the management agency:
“(k) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
“(l) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
“(m) the plan’s commencement date and termination date.

“Compensation
“(3) A plan—
“(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
“(b) must not provide for the payment of compensation for the following losses:
“(i) loss suffered because a person’s income derived from feral or wild organisms is adversely affected by the implementation of the plan:
“(ii) loss suffered before an inspector or authorised person establishes the presence of the pest on the place of the person suffering the loss:
“(iii) loss suffered by a person who fails to comply with the plan.

“Rules
“(4) A plan may include rules for all or any of the following purposes:
“(a) requiring a person to take specified actions to enable the management agency to determine or monitor the presence or distribution of the pest or a pest agent:
“(b) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
“(c) requiring the identification of specified goods:
“(d) prohibiting or regulating specified methods that may be used in managing the pest:
“(e) prohibiting or regulating activities that may affect measures taken to implement the plan:
“(f) requiring audits or inspections of specified actions:
“(g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:

“(h) requiring the occupier of a place to take specified actions to eradicate or manage the pest or a specified pest agent on the place:

“(i) requiring the occupier of a place to take specified actions to eradicate or manage the habitat of the pest or the habitat of a specified pest agent on the place:

“(j) prohibiting or regulating specified activities by the occupier of a place if the activities are of the kind that would promote the habitat of the pest on the place:

“(k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on the place:

“(l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:

“(m) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of the pest:

“(n) requiring the owners or persons in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:

“(o) requiring the destruction of goods if the goods may contain or harbour the pest or otherwise pose a risk of spreading the pest:

“(p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:

“(q) prohibiting or regulating the use or disposal of organic material:

“(r) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:

“(s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.

“(5) A rule may—

“(a) apply generally or to different classes or descriptions of persons, places, goods, or other things:

“(b) apply all the time or at a specified time of the year:

“(c) apply throughout the region or in a specified part or parts of the region with, if necessary, another rule on the same subject matter applying to another specified part of the region:
“(d) provide that no exemptions from the rule may be granted under section 76:
“(e) specify that a contravention of the rule creates an offence under section 154M(20).
“(6) If the plan includes rules, the council must have regard to the extent to which each rule is likely—
“(a) to assist in achieving the objectives of the plan; and
“(b) to restrict the rights of individuals.
“(7) The council may decide not to include a rule in the plan if the council considers that the rule—
“(a) is unlikely to assist in achieving the objectives of the plan; or
“(b) is likely to trespass unduly on the rights of individuals.

“73 Decision on plan
“(1) When the council is satisfied with the content of a plan prepared under section 72, the council must prepare a written report on the plan.
“(2) If the council has received submissions on the proposal, the council must—
“(a) set out in the report the council’s reasons for accepting or rejecting the submissions; and
“(b) give a copy of the report to every person who made a submission.
“(3) The report must give the council’s decision on the plan.
“(4) The council must give public notice—
“(a) stating the council’s decision on the plan; and
“(b) stating where the plan resulting from the council’s decision can be read.

“74 Application to Environment Court about plan
“(1) The following matters arising from the plan described in section 73(4)(b) may be the subject of an application to the Environment Court:
“(a) whether a provision in the plan should be in it:
“(b) whether a provision not in the plan should be in it:
“(c) whether the plan is inconsistent with the national policy direction:
“(d) whether the process requirements for a proposed plan in the national policy direction, if there are any, were complied with.
“(2) The following persons may make an application:
“(a) a person who participated in consultation during the preparation of the proposal:
“(b) a person who is likely to be affected by the plan and did not participate in consultation only because the person was not given an opportunity to participate:
“(c) if consultation on a proposal was undertaken in the way described in section 71(4)(c), a person who made a submission on the proposal.

“(3) The application must be made within 15 working days of the date of the public notice.


“(5) The court must hold a public hearing on the application.

“(6) The court must—

“(a) dismiss the application; or

“(b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.

75 Making of plan

“(1) A plan is made by the council fixing the council's seal to the plan.

“(2) If no person makes an application under section 74, the council must make the plan.

“(3) If a person makes an application under section 74, the council must—

“(a) decide whether the matter dealt with in the application is severable from the rest of the plan; and

“(b) take 1 of the courses of action described in subsection (4).

“(4) The courses of action are as follows:

“(a) if the matter dealt with in the application is severable from the rest of the plan, the council must—

“(i) make the plan without the matter in it; and

“(ii) if the Environment Court gives a direction under section 74(6)(b), comply with the direction:

“(b) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court dismisses the application under section 74(6)(a), the council must make the plan:

“(c) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court gives a direction under section 74(6)(b), the council must comply with the direction before making the plan.

76 Exemptions from rules

“(1) The council may exempt a person from a requirement in a rule, without conditions or on conditions that the council considers appropriate.

“(2) The council may grant an exemption under subsection (1) only if—

“(a) the council is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and
“(b) the council is satisfied that 1 or more of the following applies:

“(i) the requirement has been substantially complied with and further compliance is unnecessary:

“(ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective or more effective than compliance with the requirement:

“(iii) the requirement is clearly unreasonable or inappropriate in the particular case:

“(iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case; and

“(c) the rule does not prohibit the granting of exemptions from it.

“(3) The council may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or things from a requirement in a rule, without conditions or on conditions that the council considers appropriate.

“(4) The council may grant an exemption under subsection (3) only if —

“(a) the council is satisfied that events have occurred that make the requirement unnecessary or inappropriate; and

“(b) the rule does not prohibit the granting of exemptions from it.

“(5) The council must provide a register that—

“(a) records the number and nature of exemptions granted under this section; and

“(b) is available for the public to read free of charge—

“(i) at the council's offices during the council's normal office hours; or

“(ii) on an internet site maintained by or on behalf of the council.

“Pathway management plans

“National pathway management plans

“77 Definitions for sections 78 to 84

For the purposes of sections 78 to 84,—

“management agency means a management agency responsible for implementing a national pathway management plan

“plan means a national pathway management plan

“proposal means a proposal for a national pathway management plan

“rule means a rule in a national pathway management plan.
“78 Relationship of rules and plan with laws

“(1) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.

“(2) If a plan imposes obligations and costs on the Crown, the Crown must comply with the obligations and meet the costs.

“79 Plan initiated by proposal

“(1) The making of a plan is initiated by a proposal made by—

“(a) a Minister; or

“(b) a person who submits the proposal to a Minister.

“(2) The proposal must set out the following matters:

“(a) the name of the person making the proposal:

“(b) the subject of the proposal, which means the pathway or pathways to which the proposal applies:

“(c) for each subject,—

“(i) a description of the actual or potential risks associated with it:

“(ii) the reasons for proposing a plan:

“(iii) the objectives that the plan would have:

“(iv) the principal measures that would be in the plan to achieve the objectives:

“(v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives:

“(vi) the reasons why a national plan is more appropriate than a regional plan:

“(vii) an analysis of the benefits and costs of the proposed plan:

“(viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the proposed plan:

“(ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:

“(x) the anticipated costs of implementing the proposed plan:

“(xi) how it is proposed that the costs be funded:
“(xii) the rationale for the proposed allocation of costs:
“(xiii) if it is proposed that the plan be funded by a levy under section 100G, how the proposed levy satisfies section 100G(5)(d) and what matters will be specified under section 100I(1):
“(xiv) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the proposed plan requires to pay the costs:
“(d) the effect that, in the opinion of the person making the proposal, implementation of the plan would have on—
“(i) economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga:
“(ii) the marketing overseas of New Zealand products:
“(e) if the proposed plan would affect another pathway management plan or a pest management plan, how it is proposed to co-ordinate the implementation of the plans:
“(f) the powers in Part 6 that it is proposed to use to implement the plan:
“(g) the intended scope and purpose of each proposed rule:
“(h) the rules whose contravention is proposed to be an offence under this Act:
“(i) the management agency:
“(j) the means by which it is proposed to measure the achievement of the plan’s objectives:
“(k) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
“(l) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the proposed plan:
“(m) information on the disposal of the proceeds of any receipts arising in the course of implementing the proposed plan:
“(n) whether the proposed plan includes portions of road
adjoining land it covers, as authorised by section 6, and if so, the portions of road proposed to be included:

“(o) the period for which it is proposed the plan be in force:

“(p) the consultation, if any, that has occurred on the proposal and the outcome of it.

“80 Requirements to proceed with plan

“(1) This section sets out the matters on which the Minister must be satisfied before the Minister acts under section 82.

“(2) The Minister must be satisfied that the proposal—

“(a) is not frivolous or vexatious; and

“(b) is clear enough to be readily understood; and

“(c) is not inconsistent with the national policy direction; and

“(d) has merit as a means of managing the subject of the plan, which means the pathway or pathways; and

“(e) complies with section 79(2).

“(3) The Minister must be satisfied that each subject could spread an organism that is capable of causing at some time an adverse effect on 1 or more of the following in New Zealand:

“(a) economic wellbeing:

“(b) the viability of threatened species of organisms:

“(c) the survival and distribution of indigenous plants or animals:

“(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity:

“(e) soil resources:

“(f) water quality:

“(g) human health:

“(h) the enjoyment of the recreational value of the natural environment:

“(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga.

“(4) The Minister must be satisfied that—

“(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and

“(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan—

“(i) will accrue, as a group, benefits outweighing the costs; or

“(ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to
“(5) The Minister must be satisfied that the implementation of the proposed plan would not be contrary to New Zealand’s international obligations.

“(6) The Minister must be satisfied that, if the Minister rejected a similar proposal within the last 3 years, new and material information is now available.

“(7) The Minister must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there are any, were complied with.

“(8) The Minister must be satisfied that, during the development of the proposal,—

“(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and

“(b) local authorities whose responsibilities may be affected by the proposed plan were consulted; and

“(c) the tangata whenua of the area who may be affected by the proposed plan were consulted through iwi authorities and tribal runanga.

“(9) The Minister must be satisfied that, if consultation with other persons was appropriate during the development of the proposal, sufficient consultation occurred.

“81 Consultation on proposal

“(1) In considering whether the Minister is satisfied as required by section 80(9), the Minister must have regard to the following:

“(a) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation:

“(b) the scale of the impacts on persons who are likely to be affected by the proposal:

“(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.

“(2) Subsections (3) and (4) apply if the Minister is not satisfied as required by section 80(9).

“(3) The Minister may require consultation to be undertaken on the proposal.

“(4) If the Minister requires consultation to be undertaken, the Minister must determine the way or ways in which the consultation is to be undertaken, including, but not limited to, ways such as—

“(a) consultation with persons likely to be affected by the proposal or with their representatives:
“(b) the appointment by the Minister of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the Minister:
“(c) public notification of the proposal and the receipt of submissions.

“82 Contents of plan
“(1) When the Minister is satisfied of the matters in section 80, the Minister may approve the preparation of a plan.

“Matters to be specified
“(2) A plan must specify the following matters:
“(a) the pathway or pathways to be managed:
“(b) the objectives of the plan:
“(c) the principal measures to be taken to achieve the objectives:
“(d) the means by which the achievement of the plan's objectives will be measured:
“(e) the sources of funding for the implementation of the plan:
“(f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
“(g) the powers in Part 6 to be used to implement the plan:
“(h) the rules, if any:
“(i) the management agency:
“(j) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
“(k) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
“(l) the plan's commencement date and, if there is one, its termination date.

“Compensation
“(3) A plan—
“(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
“(b) must not provide for the payment of compensation for the following losses:
“(i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:
“(ii) loss suffered by a person who fails to comply with the plan.

“Rules
“(4) A plan may include rules for all or any of the following purposes:
“(a) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
“(b) requiring the identification of specified goods:
“(c) prohibiting or regulating specified methods that may be used in managing the pathway:
“(d) prohibiting or regulating activities that may affect measures taken to implement the plan:
“(e) requiring audits or inspections of specified actions:
“(f) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
“(g) requiring the owners or persons in charge of goods or craft to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
“(h) requiring the destruction of goods in circumstances in which the goods pose a risk of spreading organisms that could be spread through the pathway:
“(i) prohibiting or regulating specified uses or movement of goods that may promote the spread of organisms through the pathway:
“(j) prohibiting or regulating the use or disposal of organic material on the pathway:
“(k) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread of organisms through the pathway.
“(5) A rule may—
“(a) apply generally or to different classes or descriptions of persons, places, goods, or other things:
“(b) apply all the time or at a specified time of the year:
“(c) apply throughout New Zealand or in a specified part or parts of New Zealand, with, if necessary, another rule on the same subject matter applying to another specified part of New Zealand:
“(d) provide that no exemptions from the rule may be granted under section 84:
“(e) specify that a contravention of the rule creates an offence under section 154M(19).
“(6) If the plan includes rules, the Minister must have regard to the extent to which each rule is likely—
“(a) to assist in achieving the objectives of the plan; and
“(b) to restrict the rights of individuals.
“(7) The Minister may decide not to include a rule in the plan if the Minister considers that the rule—

“(a) is unlikely to assist in achieving the objectives of the plan; or

“(b) is likely to trespass unduly on the rights of individuals.

“83 Making of plan

“(1) When the Minister is satisfied with the content of a plan prepared under section 82, the Minister may recommend to the Governor-General that an Order in Council be made making the plan.

“(2) The order is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

“84 Exemptions from rules

“(1) Members of the New Zealand Defence Force are exempt from the requirements in rules for acts or omissions in the course of an emergency relating to—

“(a) a threat to New Zealand’s interests under section 5 of the Defence Act 1990:

“(b) the safety of human life:

“(c) the safety of ships or aircraft:

“(d) the protection of the environment:

“(e) equipment or facilities of high value.

“(2) The Minister may exempt a person from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.

“(3) The Minister may grant an exemption under subsection (2) only if—

“(a) the Minister is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and

“(b) the Minister is satisfied that 1 or more of the following applies:

“(i) the requirement has been substantially complied with and further compliance is unnecessary:

“(ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective or more effective than compliance with the requirement:

“(iii) the requirement is clearly unreasonable or inappropriate in the particular case:

“(iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case; and

“(c) the rule does not prohibit the granting of exemptions from it.

“(4) The Minister may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or
things from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.

“(5) The Minister may grant an exemption under subsection (4) only if —

“(a) the Minister is satisfied that events have occurred that make the requirement unnecessary or inappropriate; and

“(b) the rule does not prohibit the granting of exemptions from it.

“(6) As soon as practicable after granting an exemption, the Minister must notify the nature of the grant in the Gazette.

“Regional pathway management plans

“85 Definitions for sections 86 to 94

For the purposes of sections to 86 to 94,—

“council means a regional council

“management agency means a management agency responsible for implementing a pathway management plan

“plan means a regional pathway management plan

“proposal means a proposal for a regional pathway management plan

“rule means a rule in a regional pathway management plan.

“86 Relationship of rules with law

“(1) To the extent to which a regulation made under this or any other Act is inconsistent with a rule, the regulation prevails.

“(2) To the extent to which a rule in a national pest management plan is inconsistent with a rule, the rule in the national pest management plan prevails.

“(3) To the extent to which a rule in a national pathway management plan is inconsistent with a rule, the rule in the national pathway management plan prevails.

“(4) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.

“(5) If a rule imposes obligations and costs on the Crown, the Crown must comply with the obligations and meet the costs.

“87 Plan initiated by proposal

“(1) The making of a plan is initiated by a proposal made by—

“(a) the council; or

“(b) a person who submits the proposal to the council.

“(2) The proposal must set out the following matters:

“(a) the name of the person making the proposal:

“(b) the subject of the proposal, which means the pathway or pathways to which the proposal applies:

“(c) for each subject,—

“(i) a description of the actual or potential risks associated with it:
“(ii) the reasons for proposing a plan:
“(iii) the objectives that the plan would have:
“(iv) the principal measures that would be in the plan to achieve the objectives:
“(v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives:
“(vi) an analysis of the benefits and costs of the proposed plan:
“(vii) the extent to which any persons, or persons of a class or description, are likely to benefit from the proposed plan:
“(viii) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:
“(ix) the rationale for the proposed allocation of costs:
“(x) if it is proposed that the plan be funded by a levy under section 100G, how the proposed levy satisfies section 100G(5)(d) and what matters will be specified under section 100I(1):
“(xi) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the proposed plan requires to pay the costs:
“(d) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—
“(i) economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga:
“(ii) the marketing overseas of New Zealand products:
“(e) if the proposed plan would affect another pathway management plan or a pest management plan, how it is
proposed to co-ordinate the implementation of the plans:

“(f) the powers in Part 6 that it is proposed to use to implement the plan:

“(g) the intended scope and purpose of each proposed rule:

“(h) the rules whose contravention is proposed to be an offence under this Act:

“(i) the management agency:

“(j) the means by which it is proposed to measure the achievement of the plan’s objectives:

“(k) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:

“(l) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the proposed plan:

“(m) information on the disposal of the proceeds of any receipts arising in the course of implementing the proposed plan:

“(n) whether the proposed plan includes portions of road adjoining land it covers, as authorised by section 6, and if so, the portions of road proposed to be included:

“(o) the anticipated costs of implementing the proposed plan:

“(p) how it is proposed that the costs be funded:

“(q) the period for which it is proposed the plan be in force:

“(r) the consultation, if any, that has occurred on the proposal and the outcome of it.

88 Requirements to proceed with plan

“(1) This section sets out the matters on which the council must be satisfied before the council acts under section 90.

“(2) The council must be satisfied that the proposal—

“(a) is not frivolous or vexatious; and

“(b) is clear enough to be readily understood; and

“(c) is not inconsistent with—

“(i) the national policy direction; or

“(ii) any other pathway management plan or pest management plan; or

“(iii) any regulations; or

“(iv) a regional policy statement or regional plan prepared under the Resource Management Act 1991; and

“(d) has merit as a means of managing the subject of the
plan, which means the pathway or pathways; and

“(e) complies with section 87(2).

“(3) The council must be satisfied that each subject could spread an organism that is capable of causing at some time an adverse effect on 1 or more of the following in the region:

“(a) economic wellbeing;
“(b) the viability of threatened species of organisms;
“(c) the survival and distribution of indigenous plants or animals;
“(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity:
“(e) soil resources:
“(f) water quality:
“(g) human health:
“(h) the enjoyment of the recreational value of the natural environment:
“(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga.

“(4) The council must be satisfied that—

“(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and

“(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan—

“(i) will accrue, as a group, benefits outweighing the costs; or
“(ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and

“(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years.

“(5) The council must be satisfied that, if the council rejected a similar proposal within the last 3 years, new and material information is now available.

“(6) The council must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there are any, were complied with.

“(7) The council must be satisfied that, during the development of the proposal,—

“(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and
“(b) local authorities whose responsibilities may be affected
by the proposed plan were consulted; and

“(c) the tangata whenua of the area who may be affected by the proposed plan were consulted through iwi authorities and tribal runanga.

“(8) The council must be satisfied that, if consultation with other persons was appropriate during the development of the proposal, sufficient consultation occurred.

“89 Consultation on proposal

“(1) In considering whether the council is satisfied as required by section 88(8), the council must have regard to the following:

“(a) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation:

“(b) the scale of the impacts on persons who are likely to be affected by the proposal:

“(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.

“(2) Subsections (3) and (4) apply if the council is not satisfied as required by section 88(8).

“(3) The council may require consultation to be undertaken on the proposal.

“(4) If the council requires consultation to be undertaken, the council must determine the way or ways in which the consultation is to be undertaken, including, but not limited to, ways such as—

“(a) consultation with persons likely to be affected by the proposal or with their representatives:

“(b) the appointment by the council of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the council:

“(c) public notification of the proposal and the receipt of submissions.

“90 Contents of plan

“(1) When the council is satisfied of the matters in section 88, the council may approve the preparation of a plan.

“Matters to be specified

“(2) A plan must specify the following matters:

“(a) the pathway or pathways to be managed:

“(b) the objectives of the plan:

“(c) the principal measures to be taken to achieve the objectives:

“(d) the means by which the achievement of the plan’s objectives will be measured:

“(e) the sources of funding for the implementation of the plan:

“(f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
“(g) the powers in Part 6 to be used to implement the plan:
“(h) the rules, if any:
“(i) the management agency:
“(j) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
“(k) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
“(l) the plan’s commencement date and, if there is one, its termination date.

“Compensation
“(3) A plan—
“(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
“(b) must not provide for the payment of compensation for the following losses:
“(i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:
“(ii) loss suffered because a person fails to comply with the plan.

“Rules
“(4) A plan may include rules for all or any of the following purposes:
“(a) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
“(b) requiring the identification of specified goods:
“(c) prohibiting or regulating specified methods that may be used in managing the pathway:
“(d) prohibiting or regulating activities that may affect measures taken to implement the plan:
“(e) requiring audits or inspections of specified actions:
“(f) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
“(g) requiring the owners or persons in charge of goods or craft to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
“(h) requiring the destruction of goods in circumstances in which the goods pose a risk of
spreading organisms that could be spread through the pathway:

“(i) prohibiting or regulating specified uses or movement of goods that may promote the spread of organisms through the pathway:

“(j) prohibiting or regulating the use or disposal of organic material on the pathway:

“(k) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread of organisms through the pathway.

“(5) A rule may—

“(a) apply generally or to different classes or descriptions of persons, places, goods, or other things:

“(b) apply all the time or at a specified time of the year:

“(c) apply throughout the region or in a specified part or parts of the region, with, if necessary, another rule on the same subject matter applying to another specified part of the region:

“(d) provide that no exemptions from the rule may be granted under section 94:

“(e) specify that a contravention of the rule creates an offence under section 154M(20).

“(6) If the plan includes rules, the council must have regard to the extent to which each rule is likely—

“(a) to assist in achieving the objectives of the plan; and

“(b) to restrict the rights of individuals.

“(7) The council may decide not to include a rule in the plan if the council considers that the rule—

“(a) is unlikely to assist in achieving the objectives of the plan; or

“(b) is likely to trespass unduly on the rights of individuals.

“91 Decision on plan

“(1) When the council is satisfied with the content of a plan prepared under section 90, the council must prepare a written report on the plan.

“(2) If the council has received submissions on the proposal, the council must—

“(a) set out in the report the council's reasons for accepting or rejecting the submissions; and

“(b) give a copy of the report to every person who made a submission.

“(3) The report must give the council's decision on the plan.

“(4) The council must give public notice—

“(a) stating the council's decision on the plan; and

“(b) stating where the plan resulting from the council's decision can be read.
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“92 Application to Environment Court about plan

(1) The following matters arising from the plan described in section 91(4)(b) may be the subject of an application to the Environment Court:

(a) whether a provision in the plan should be in it;
(b) whether a provision not in the plan should be in it;
(c) whether the plan is inconsistent with the national policy direction;
(d) whether the process requirements for a proposed plan in the national policy direction, if there are any, were complied with.

(2) The following persons may make an application:

(a) a person who participated in consultation on the proposal;
(b) a person who is likely to be affected by the plan and did not participate in consultation only because the person was not given an opportunity to participate;
(c) if consultation on a proposal was undertaken in the way described in section 89(4)(c), a person who made a submission on the proposal.

(3) The application must be made within 15 working days of the date of the public notice.


(5) The court must hold a public hearing on the application.

(6) The court must—

(a) dismiss the application; or
(b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.

“93 Making of plan

(1) A plan is made by the council fixing the council's seal to the plan.

(2) If no person makes an application under section 92, the council must make the plan.

(3) If a person makes an application under section 92, the council must—

(a) decide whether the matter dealt with in the application is severable from the rest of the plan; and
(b) take 1 of the courses of action described in subsection (4).

(4) The courses of action are as follows:

(a) if the matter dealt with in the application is severable from the rest of the plan, the council must—

(i) make the plan without the matter in it; and
(ii) if the Environment Court gives a direction under section 92(6)(b),
comply with the direction:

“(b) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court dismisses the application under section 92(6)(a), the council must make the plan:

“(c) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court gives a direction under section 92(6)(b), the council must comply with the direction before making the plan.

“94 Exemptions from rules

“(1) Members of the New Zealand Defence Force are exempt from the requirements in rules for acts or omissions in the course of an emergency relating to—

“(a) a threat to New Zealand's interests under section 5 of the Defence Act 1990:

“(b) the safety of human life:

“(c) the safety of ships or aircraft:

“(d) the protection of the environment:

“(e) equipment or facilities of high value.

“(2) The council may exempt a person from a requirement in a rule, without conditions or on conditions that the council considers appropriate.

“(3) The council may grant an exemption under subsection (2) only if—

“(a) the council is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and

“(b) the council is satisfied that 1 or more of the following applies:

“(i) the requirement has been substantially complied with and further compliance is unnecessary:

“(ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective or more effective than compliance with the requirement:

“(iii) the requirement is clearly unreasonable or inappropriate in the particular case:

“(iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case; and

“(c) the rule does not prohibit the granting of exemptions from it.

“(4) The council may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified
goods or things from a requirement in a rule, without conditions or on conditions that the council considers appropriate.

“(5) The council may grant an exemption under subsection (4) only if —

“(a) the council is satisfied that events have occurred that make the requirement unnecessary or inappropriate; and

“(b) the rule does not prohibit the granting of exemptions from it.

“(6) The council must provide a register that—

“(a) records the number and nature of exemptions granted under this section; and

“(b) is available for the public to read free of charge—

“(i) at the council's offices during the council's normal office hours; or

“(ii) on an internet site maintained by or on behalf of the council.

“Implementation of plans

“95 Definitions for sections 96 to 100B

For the purposes of sections 96 to 100B,—

“Minister or council means the Minister who recommended the making of the plan, in relation to a national pest management plan and a national pathway management plan, or a regional council, in relation to a regional pest management plan or a regional pathway management plan

“operational plan means a plan for the implementation of—

“(a) a national pest management plan:

“(b) a regional pest management plan:

“(c) a national pathway management plan:

“(d) a regional pathway management plan

“plan means—

“(a) a national pest management plan:

“(b) a regional pest management plan:

“(c) a national pathway management plan:

“(d) a regional pathway management plan.

“96 Management agencies

“(1) The management agency specified in a plan must be 1 of the following bodies:

“(a) a department:

“(b) a council:

“(c) a territorial authority:

“(d) a body corporate.

“(2) In deciding which body is to be the management agency, the Minister or council must take the following into consideration:

“(a) the need for accountability to those providing the funds to implement the plan; and
“(b) the acceptability of the body to—
  “(i) those providing the funds to implement the plan; and
  “(ii) those subject to management provisions under the plan; and
  “(c) the capacity of the body to manage the plan, including the competence and expertise of the body’s employees and contractors.

“(3) If a management agency gives the Minister or council a written notice of resignation, or goes into liquidation, or ceases to exist, the Minister or council must, as soon as practicable,—
  “(a) appoint another body to be the management agency; and
  “(b) publicly notify the appointment.

“97 Powers in Part 6

“(1) A plan must be implemented using only the powers in Part 6 specified in the plan as those to be used to implement the plan.

“(2) The management agency specified in the plan may exercise a power in Part 6 only if the plan provides for the agency to exercise the power.

“(3) An authorised person may exercise a power given to an authorised person in Part 6 only if the person is appointed for the purposes of the plan.

“98 Operational plans

“(1) A management agency must—

“(a) prepare an operational plan within 3 months after the commencement date specified under section 64(2)(l), 72(2)(m), 82(2)(l), or 90(2)(l); and

“(b) review the operational plan annually; and

“(c) decide on appropriate amendments to the operational plan, if necessary; and

“(d) make copies of the operational plan and every amended version available to the public at cost; and

“(e) provide a copy of the operational plan and every amended version to the Minister or council.

“(2) A management agency must—

“(a) prepare a report on the operational plan and its implementation not later than 5 months after the end of each financial year; and

“(b) provide a copy of the report to the Minister or council.

“(3) A management agency for a regional pest management plan or regional pathway management plan—

“(a) may submit the report on the operational plan and its implementation for inclusion in the regional council’s annual report; and

“(b) must make the report on the operational plan and its implementation available to the public as a separate document,
“(4) The Minister or council may give the management agency written notice that the Minister or council intends to disallow all or part of an operational plan on the ground that the Minister or council believes that the whole operational plan, or the part of it, is inconsistent with the plan that the operational plan implements.

“(5) A notice under subsection (4)—

“(a) must be given before, or within 20 working days after, the Minister or council receives a copy of the operational plan or an amended version under subsection (1)(e); and

“(b) has the effect that the whole operational plan, or the part of it, is of no effect; and

“(c) may be revoked by a later written notice given by the Minister or council to the management agency allowing the whole operational plan or the part.

“99 Duration of plans

A plan ceases to have effect when the earliest of the following occurs:

“(a) the plan’s termination date is reached;

“(b) the Minister or council issues a public notice declaring that the objectives of the plan have been achieved:

“(c) the plan is revoked following a review under section 100.

“100 Review of plans

“Reasons for reviews

“(1) The Minister or council must initiate a review of a plan as a whole if—

“(a) the plan is due to terminate in less than 12 months and the Minister or council proposes to extend the plan’s duration; or

“(b) the plan is due to terminate in less than 12 months and a person requests the Minister or council to initiate a proposal to extend the plan’s duration; or

“(c) the plan was last reviewed as a whole more than 10 years previously.

“(2) The Minister or council may review the whole or part of a plan if the Minister or council has reason to believe—

“(a) that the plan or part is failing to achieve its objectives; or

“(b) that relevant circumstances have changed since the plan or part commenced.

“(3) When the national policy direction is made under section 57, amended under section 58(1), or revoked and replaced under section 58(2), the following provisions apply:

“(a) the Minister or council must review all plans or relevant parts of all plans:
“(b) the review must be completed in the period required by the national policy direction.

“Proposal for review

“(4) A review is initiated by a proposal made by the Minister or council or any other person.

“(5) The proposal—

“(a) must state whether the proposal is to amend, revoke, revoke and replace, or leave unchanged the plan or part of the plan; and

“(b) must give reasons for the proposal; and

“(c) must,—

“(i) if the proposal is to amend the plan or part of the plan, set out any proposed amendments in full; or

“(ii) if the proposal is to revoke and replace the plan or part of the plan, set out the replacement plan or part; and

“(d) must,—

“(i) if the proposal is to amend the plan or part of the plan, or to revoke and replace the plan or part of the plan, comply with section 61, 69, 79, or 87; or

“(ii) if the proposal is to revoke the plan or part of the plan, comply with section 61, 69, 79, or 87 to the extent to which it is possible to do so; and

“(e) may propose that a pest or pathway, as appropriate, be added to the plan, whether or not the review is of the whole plan.

“Provisions applying to reviews

“(6) For a proposal to amend the plan or part of the plan, or to revoke and replace the plan or part of the plan, reviews are conducted under the sections described in subsection (7); for a proposal to revoke the plan or part of the plan, reviews are conducted under the sections to the extent to which it is possible to do so.

“(7) The sections are—

“(a) sections 59 to 66, for a national pest management plan:

“(b) sections 67 to 76, for a regional pest management plan:

“(c) sections 77 to 84, for a national pathway management plan:

“(d) sections 85 to 94, for a regional pathway management plan.

“Action after review

“(8) Following the review, the Minister or council may approve—

“(a) the amendment of the plan or part of the plan; or

“(b) the revocation and replacement of the plan or part of the plan; or...
“(c) the revocation of the plan or part of the plan; or
“(d) the leaving unchanged of the plan or part of the plan.
“(9) A plan that reaches its termination date during a review that has begun continues in force and its future is determined by the action that the Minister or council approves under subsection (8).

“Consequence of not complying with section
“(10) A plan does not cease to be in force only because it is not reviewed as required by this section.

“100A Application to Environment Court if regional plan not reviewed
“(1) This section applies if a regional pest management plan or a regional pathway management plan is not reviewed as required by section 100(3) or is not reviewed in the time period required by section 100(3).
“(2) A person may apply to the Environment Court for a declaration of inconsistency between the national policy direction and the regional pest management plan or the regional pathway management plan.
“(4) The court must hold a public hearing on the application.
“(5) The court must—
“(a) dismiss the application; or
“(b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.
“(6) The council must comply with a direction under subsection (5)(b).

“100B Minor changes to plans
“(1) The Minister may recommend to the Governor-General the amendment of a national pest management plan or a national pathway management plan by Order in Council without a review under section 100, if the Minister is satisfied that the amendment—
“(a) does not have a significant effect on any person's rights and obligations; and
“(b) is not inconsistent with the national policy direction.
“(2) The Governor-General may make the order.
“(3) The order is a regulation for the purposes of the Regulations (Disallowance) Act 1989.
“(4) A regional pest management plan or a regional pathway management plan may be amended from time to time by a council by resolution without a review under section 100, if the council is satisfied that the amendment—
“(a) does not have a significant effect on any person's rights and obligations; and
“(b) is not inconsistent with the national policy direction.

“Councils’ powers and duties relating to regional plans
“100C Councils’ powers and duties

“(1) This section applies to—

“(a) a regional pest management plan;
“(b) a regional pathway management plan.

“(2) The Local Government Act 2002 applies to the implementation of a plan by a council.

“(3) A council must not delegate—

“(a) the power to determine the ways in which consultation is to be undertaken; or
“(b) the power to make, review, amend, or revoke a plan; or
“(c) the power to declare a small-scale management programme under section 100Q.

“(4) Two or more councils may prepare a plan jointly and, if they do, must each make it.

“(5) The following provisions apply to a plan prepared jointly and made by each council:

“(a) the councils must state in the plan whether it is to be implemented by 1, some, or all of them:
“(b) if the plan is to be implemented by 1 council, this Act and the plan have effect as if the regions of the councils are a single region with that council as the single council:
“(c) if the plan is to be implemented by some or all of the councils,—

“(i) the plan must state the extent to which the councils are empowered to implement it outside their own regions; and
“(ii) this Act and the plan have effect as stated in the plan:

“(d) each council retains its power to amend or revoke the plan it has made.

“(6) The council must provide 1 copy of each plan made by the council to every public library in its area.

“Compensation

“100D Compensation

“(1) This section applies to a pest management plan.

“(2) Subsection (3) applies when—

“(a) a person owns—

“(i) domesticated organisms infected by a pest to which a pest management plan applies; or
“(ii) domesticated organisms that are pest agents for a pest to which a pest management plan applies; or
“(iii) domesticated organisms whose feral or wild population is a pest to which a pest management plan applies; and
“(b) some or all of the organisms are necessarily destroyed in the course of implementing the plan; and
“(c) there are net proceeds available from the disposal of the organisms destroyed.

“(3) The net proceeds—
“(a) must be paid to the owner if the plan does not provide for the payment of compensation to the owner of organisms destroyed:
“(b) must be paid to the owner instead of compensation if the compensation payable to the owner under the plan is less than the proceeds:
“(c) must be retained by the management agency in any other case.

“(4) If there is a dispute about eligibility for, or the amount of, compensation,—
“(a) the dispute must be submitted to arbitration; and
“(b) the arbitration must be conducted under the Arbitration Act 1996.

“Funding of implementation of plans

“100E Definitions for sections 100F to 100N
For the purposes of sections 100F to 100N, plan means—
“(a) a national pest management plan:
“(b) a regional pest management plan:
“(c) a national pathway management plan:
“(d) a regional pathway management plan.

“100F Limitation on expenditure
A management agency must not spend funds to meet the costs of implementing a plan in contravention of the limitations, if any, that the plan imposes on the expenditure of funds.

“Funding from levy

“100G Levy orders
“(1) The Governor-General may impose a levy for the purposes of wholly or partly funding the implementation of a plan or part of a plan.
“(2) The levy is payable to the plan’s management agency.
“(3) A levy may be imposed only by Order in Council.
“(4) A levy order may be made only on the recommendation of a Minister.
“(5) The Minister may make a recommendation only if satisfied, on the basis of information and evidence that the Minister regards as satisfactory, that—
“(a) persons likely to be affected by the payment or collection of the levy have been consulted; and
“(b) persons opposing the levy’s imposition have had a reasonable opportunity to put their views to the Minister; and
“(c) all views put to the Minister about the proposed imposition
of the levy have been given due regard; and

“(d) the imposition of the levy is the most appropriate means of funding the plan or the part of the plan, having regard to the extent to which the levy would target—

“(i) persons likely to benefit from the implementation of the plan or the part of the plan; and

“(ii) persons who by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan or the part of the plan; and

“(e) if the levy is imposed on quantities of a commodity imported, its imposition will not constitute a non-tariff barrier and will not be contrary to New Zealand’s international legal obligations; and

“(f) the management agency will have in place adequate systems of accounting to persons who will be responsible for paying the levy; and

“(g) all other relevant matters known to the Minister have been properly considered.

“(6) A levy order may be made from time to time.

“(7) The order is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

“100H Effect of order

“(1) A person responsible for paying a levy set by a levy order must pay it.

“(2) The management agency may recover a levy from a person responsible for paying it as a debt due in a court of competent jurisdiction.

“100I Contents of order

“(1) A levy order must specify—

“(a) the purposes for which the levy may be spent; and

“(b) how the management agency is to consult with the persons responsible for paying the levy about the spending of the levy; and

“(c) the persons primarily responsible for paying the levy; and

“(d) the persons, if any, exempt from paying the levy; and

“(e) whether the levy is to be paid at a single rate or 2 or more different rates; and

“(f) if the levy is to be paid at different rates,—

“(i) the places, goods, or other things to which the different rates apply; and

“(ii) how the different rates are calculated; and
“(iii) the maximum for each different rate; and
“(g) how the rate or rates of the levy and variations of the rate or rates are to be notified; and
“(h) when and how the levy is to be paid; and
“(i) the persons responsible for collecting the levy; and
“(j) whether or not the persons collecting the levy are entitled to recover the cost of collection and, if the persons are entitled to do so, the estimated amount of the cost; and
“(k) for the purpose of ascertaining whether or not the order is being complied with,—
“(i) the keeping of accounts, statements, and records of a specified class or description by all or any of the management agency, the persons responsible for collecting the levy, and the persons responsible for paying it; and
“(ii) the retention of the accounts, statements, or records for a specified period; and
“(l) for the purpose of resolving disputes about whether or not a person is required to pay the levy and the amount of levy a person is required to pay,—
“(i) the appointment of arbitrators; and
“(ii) the procedures to be followed by arbitrators; and
“(iii) the remuneration of arbitrators; and
“(iv) the payment of arbitration costs; and
“(v) a right of appeal to a District Court Judge against decisions of arbitrators; and
“(vi) the procedures governing the exercise of the right of appeal; and
“(vii) any other matters relating to the resolution of disputes; and
“(m) the remuneration payable to an auditor appointed under section 100K.

“(2) A levy order may specify—
“(a) the returns to be made to the management agency or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:
“(b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of the levy:
“(c) a method of paying the levy that may be used by persons who object on conscientious or religious grounds to paying the levy in the manner provided in the order:
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“(d) a requirement for the payment of additional or increased amounts of levy when amounts of levy originally payable have been paid late, paid in part, or not paid at all;

“(e) a requirement for the funds from which levy payments are to be made to the management agency to be held on trust in a separate account.

“100J Trust accounts for levy money

“(1) This section applies if a levy order specifies a requirement that the funds from which levy payments are to be made to the management agency must be held on trust in a separate account.

“(2) For the purposes of this section, the amount outstanding to the management agency on a day by a person responsible for collecting the levy is calculated by subtracting the total of the levy payments that the person makes before that day to the management agency from the total of the amounts that subsection (4) requires the person to deposit in the account not later than a day before that day.

“(3) A person responsible for collecting the levy must—

“(a) keep an account—

“(i) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and

“(ii) named in a way that identifies it as a trust account kept by the person responsible for collecting the levy; and

“(b) take all practicable steps to ensure that the account is used for holding only the amounts that subsection (4) requires to be deposited in it; and

“(c) take all practicable steps to ensure that the balance in the account on any day is not less than the amount outstanding to the management agency on that day by the person; and

“(d) on ceasing to be a person responsible for collecting the levy, continue to keep the account until all the levy money payable to the management agency for the period during which the person was responsible for collecting the levy has been paid.

“(4) A person responsible for collecting the levy must deposit amounts in the account by depositing an amount equal to the levy, calculated as specified in the levy order, in the account—

“(a) on the day or days specified in the order; or

“(b) on a day or days calculated as specified in the order.
“(5) The following amount in the account is held on trust for the management agency as levy money:

“(a) the amount outstanding to the management agency on a day by a person responsible for collecting the levy; or

“(b) if the amount held is less than the amount outstanding, all the money in the account.

“(6) The amount in the account held on trust for the management agency—

“(a) is not available for the payment of any other creditor of a person responsible for collecting the levy; and

“(b) is not liable to be attached or taken in execution at the instance of any other creditor of a person responsible for collecting the levy.

“100K Compliance audits for levy

“(1) This section applies while a levy order is in force.

“(2) If the management agency requests the Minister who recommended the making of the levy order to do so, the Minister may appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:

“(a) 1 or more of the persons responsible for collecting the levy;

“(b) 1 or more of the persons responsible for paying the levy.

“(3) The purpose of the audit is to ascertain the following matters, to the extent to which they are relevant to the affairs being audited and to which it is practicable to ascertain them, and to report to the Minister on them:

“(a) the extent to which persons responsible for paying the levy are doing and have done so:

“(b) the extent to which appropriate amounts of levy are being and have been paid:

“(c) the extent to which appropriate amounts of levy are being and have been collected:

“(d) the extent to which appropriate amounts of the levy are being and have been paid to the management agency by the persons collecting the levy:

“(e) the extent to which accounts, statements, and records are being and have been kept:

“(f) the extent to which the accounts, statements, and records kept are properly kept.

“(4) If an arbitrator has been appointed to resolve a dispute, the Minister may appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.

“(5) The purpose of the audit is to ascertain the matters of fact that are in dispute, to the extent to which it is practicable to ascertain them, and report them to the arbitrator, the persons involved, and the Minister.

“(6) A person is qualified for appointment as an auditor only if the person is—
“(a) a chartered accountant within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996; or

“(b) a member, fellow, or associate of an association of accountants that is—

“(i) constituted in a Commonwealth country outside New Zealand; and

“(ii) approved to audit company financial statements by the Minister of the Crown responsible under a warrant or as authorised by the Prime Minister for the administration of the Companies Act 1993; and

“(iii) named as approved under subparagraph (ii) in a notice published in the Gazette and current at the time of the appointment.

“(7) No officer or employee of any of the following may be appointed an auditor:

“(a) the management agency:

“(b) a person responsible for collecting the levy:

“(c) a person responsible for paying the levy.

“(8) A person appointed as an auditor is entitled to receive from the management agency the remuneration provided for in the order.

“100L Power of auditors to require production of documents

“(1) This section applies to an auditor appointed under section 100K.

“(2) The Minister may authorise the auditor, for the purposes of conducting an audit, to—

“(a) require the management agency, a person responsible for collecting the levy, a person responsible for paying the levy, or an employee or officer of any of the preceding 3 persons to produce for inspection in a reasonable period specified by the auditor documents that—

“(i) are accounts, statements, or records; and

“(ii) are required to be kept by this Act or a levy order; and

“(iii) are in the possession or under the control of the management agency or person; and

“(b) take copies of or extracts from the documents.

“(3) An authorisation under subsection (2) must—

“(a) be written; and

“(b) state the auditor’s full name; and

“(c) refer to this section; and
“(d) state the powers conferred on the auditor; and
“(e) state whether the powers are conferred specifically or generally.

“(4) The auditor may act under the authorisation.
“(5) The auditor must not disclose any information the auditor obtains as a result of acting under the authorisation to any other person, except that the auditor may disclose information—
“(a) under section 100K(3) or (5):
“(b) to a Minister:
“(c) to a person authorised by a Minister to receive it:
“(d) for the purposes of a prosecution under this Act:
“(e) for the purposes of an action for the recovery of an amount due under this Act.

“(6) The Official Information Act 1982 applies to information held by a Minister that was obtained under this section.

“100M Management agency to account for levy
“(1) As soon as practicable after the end of a financial year in which a levy has been paid to a management agency, the agency must prepare the following for the year:
“(a) a statement of the money paid to the agency as levy in the year:
“(b) a statement of the assets the agency has at the end of the year as a result of money paid as levy in the year:
“(c) a statement of the agency’s receipt and expenditure of money paid as levy in the year:
“(d) all other statements necessary to show fully—
“(i) the agency’s financial position as a result of money paid as levy in the year; and
“(ii) the financial results of all of the agency’s activities involving the use of the money paid as levy in the year or the use of assets the agency has at the end of the year as a result of money paid as levy in the year.

“(2) The management agency must ensure that the statements are audited within 5 months after the end of the year.

“100N Orders to be confirmed
“(1) Subsection (2) applies to a levy order that—
“(a) is made on or after 1 January and before 1 July in the same year; and
“(b) is not revoked with effect before or on 1 July in the next year; and
“(c) is not stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
“(d) will not be stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.

“(2) The order is deemed to have been revoked at the close of 30 June in the next year unless it has been confirmed by an Act of Parliament passed before or on that day.

“(3) Subsection (4) applies to a levy order that—

“(a) is made on or after 1 July and before or on 31 December in the same year; and

“(b) is not revoked with effect before or on 1 January in the year after the next year; and

“(c) is not stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and

“(d) will not be stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.

“(4) The order is deemed to have been revoked at the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed before or on that day.

“Funding from rates

“100O Regional pest management plan or regional pathway management plan

“(1) A regional council must decide the extent to which it should fund the implementation of its regional pest management plan or its regional pathway management plan from a general rate, a targeted rate, or a combination of both, set and assessed under the Local Government (Rating) Act 2002.

“(2) In making the decision, the council must have regard to—

“(a) the extent to which the plan relates to the interests of the occupiers of the properties on which the rate would be levied:

“(b) the extent to which the occupiers of the properties on which the rate would be levied will obtain direct or indirect benefits from the implementation of the plan:

“(c) the collective benefits of the implementation of the plan to the occupiers of the properties on which the rate would be levied compared with the collective costs to them of the rate:

“(d) for the regional pest management plan, the extent to which the characteristics of the properties on which the rate would be levied and the uses to which they are put contribute to the presence or prevalence of the pest or pests covered by it:
“(e) for the regional pathway management plan, the extent to which the characteristics of the properties on which the rate would be levied and the uses to which they are put contribute to the actual or potential risks associated with the pathway.

“100P National pest management plan or national pathway management plan

Section 100O does not limit or affect the powers of a council under the Local Government (Rating) Act 2002 to set and assess rates for the purpose of exercising a power that this Act confers on the council—

“(a) in relation to national pest management plans; or
“(b) in relation to national pathway management plans; or
“(c) in section 100Q.

“Small-scale management programmes

“100Q Regional council may declare small-scale management programme

“(1) A regional council may declare a small-scale management programme consisting of—

“(a) small-scale measures to eradicate or control an unwanted organism; and
“(b) provisions for compensation for losses caused by the programme.

“(2) The council may declare the programme if satisfied that—

“(a) an unwanted organism present in the region could cause serious adverse and unintended effects unless early action is taken to control it; and
“(b) the organism can be eradicated or controlled effectively by small-scale measures within 3 years of the measures starting, because—

“(i) its distribution is limited; and
“(ii) technical means to control it are available; and
“(c) the taking of the measures and, if necessary, payment of compensation is likely to cost less than an amount prescribed for the purposes of this section by the Governor-General by Order in Council; and
“(d) the taking of the measures is unlikely to result in significant monetary loss to any person, other than a person who has contributed to the presence or spread of the organism by failing to comply with this Act, regulations, a pest management plan, or a pathway management plan.

“(3) The council may—

“(a) include in the programme provision for a person other than the council to take steps to bring an organism under control; and
“(b) meet all or some of the costs to the person of taking the steps.

“(4) The council declares the programme by giving public notice in a
manner appropriate to the distribution of the organism and the persons likely to be affected by the programme.

“(5) The public notice must specify—

“(a) the unwanted organism that is the subject of the programme; and
“(b) the objectives of the programme; and
“(c) the powers to be exercised under Part 6 to implement the programme.

“(6) A programme ceases to have effect on the occurrence of the earliest of the following:

“(a) the regional council declares by public notice that the programme is failing to control the organism:
“(b) the regional council declares by public notice that the organism has been eradicated or controlled:
“(c) 5 years from the declaration of the programme.

“100R Exercise of powers under programme

“(1) A programme under section 100Q must be implemented using only the powers in Part 6 specified in the public notice.
“(2) An authorised person may exercise a power given to an authorised person in Part 6 only if the person is appointed for the purposes of the programme.
“(3) An occupier of a place on which work is to be done to implement the programme must receive a notice as follows:

“(a) the notice must incorporate the details in the public notice:
“(b) the notice must specify the work to be done:
“(c) the notice must be received not less than 5 working days before the work is due to start.

“(4) Subsection (3) does not apply if the regional council is satisfied that there are reasonable grounds to believe that the unwanted organism may spread beyond the place before the end of 5 working days.

“Part 5A - Government/industry agreement for readiness or response

“100S Purpose of Part 5A

The purpose of this Part is to provide for the government/industry agreement for readiness or response.

“100T Definitions for Part 5A

“(1) In this Part,—

“agreement means the government/industry agreement for readiness or response

government/industry agreement for readiness or response means the government/industry agreement described in section 100U

industry organisation means an organisation described in section 100V

payee means the person to whom the levy is payable under section 100X(2)
“readiness or response activity” means a readiness activity or a response activity.

“readiness or response levy order” means an Order in Council made under section 100W.

“(2) A readiness activity means an activity undertaken to prevent or reduce the impact that an unwanted organism that is not present in New Zealand would have if it were to enter New Zealand.

“(3) A response activity means an activity undertaken for 1 or more of the following purposes after the detection of an unwanted organism not previously known to be present in New Zealand:

“(a) to investigate the unwanted organism:
“(b) to control the spread of the unwanted organism:
“(c) to eradicate the unwanted organism.

“(4) A response activity ends when—
“(a) the unwanted organism is eradicated; or
“(b) long term arrangements for controlling the unwanted organism have been developed for implementation; or
“(c) a decision is made that it is appropriate to take no action, or no further action, on the unwanted organism.

“100U Government/industry agreement”

“(1) The government/industry agreement is the agreement described in this section.

“(2) The agreement consists of—

“(a) a deed between the Director-General and 1 or more industry organisations entitled under section 100V to be parties; and
“(b) 1 or more operational arrangements, made under the deed, between the Director-General and 1 or more of the other parties to the deed.

“(3) The agreement may include provisions on 1 or more of the following matters:

“(a) the unwanted organisms against which the parties wish to undertake readiness or response activities:
“(b) joint decision-making on the readiness or response activities that the parties wish to undertake:
“(c) the sharing of the costs of the readiness or response activities, which may include decisions on matters such as—
“(i) the proportions in which the costs are to be shared:
“(ii) the methods by which each party is to provide its share of the costs:
“(iii) whether a levy should be imposed on producers in the sector that the industry organisation represents:
“(iv) whether a cap should be imposed on a party’s liability to meet costs:

“(d) the variation of the compensation provisions in section 162A, subject to the restriction that the Director-General may agree to vary the compensation provisions only if satisfied that the alternative provisions are unlikely to discourage early reporting of unwanted organisms or reduce the level of cooperation with readiness or response activities:

“(e) any other matter that the parties agree on.

“(4) The exercise of a statutory power under this Act cannot be challenged on the ground that it was the result of a joint decision under the agreement.

“100V Industry organisations entitled to be parties

“(1) An industry organisation that meets the criteria in subsections (2) to (5) and (7) is entitled to be a party to the agreement.

“(2) The industry organisation must be a body corporate.

“(3) The industry organisation must have financial resources or funding arrangements in place to meet its financial commitments under the agreement.

“(4) The industry organisation must have consulted with producers in the sector who would be affected by the industry organisation becoming a party to the agreement.

“(5) The industry organisation must have given due regard to the views expressed during the consultation.

“(6) The Director-General must decide whether an organisation meets the criterion in subsection (5) by also giving regard to the views expressed during the consultation.

“(7) The industry organisation must represent the interests of a sector of producers.

“(8) The Director-General must decide whether an organisation meets the criterion in subsection (7) and may include the following among the factors taken into account in making the decision:

“(a) whether membership of the organisation is open to all producers in the sector that the organisation claims to represent:

“(b) the proportion of the producers in the sector that are members of the organisation:

“(c) how accountable the executive of the organisation is to members of the organisation.

“100W Readiness or response levy orders

“(1) The Governor-General may impose a levy for the purposes of—

“(a) wholly or partly funding a readiness or response activity that benefits a sector of producers to be undertaken by the Ministry under the agreement; or

“(b) wholly or partly reimbursing the Ministry for
undertaking a response activity that has benefited a sector of producers under the agreement.

“(2) The levy may be imposed on producers in a sector if—

“(a) an industry organisation that represents them is a party to the agreement; and

“(b) the readiness or response activity has been agreed to under provisions in the agreement.

“(3) A levy may be imposed only by Order in Council.

“(4) A levy order may be made only on the recommendation of the responsible Minister.

“(5) A levy order may be made from time to time.

“(6) A levy order is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

“100X Effect of order

“(1) This section applies to a levy imposed by a readiness or response levy order.

“(2) The levy may be payable to—

“(a) the Director-General; or

“(b) the industry organisation.

“(3) If the levy is payable to the industry organisation, it is payable to enable the organisation to meet its commitments under the agreement.

“(4) A person responsible for paying the levy must pay it.

“(5) The payee may recover a levy from a person responsible for paying it as a debt due in a court of competent jurisdiction.

“100Y Contents of order

“(1) A readiness or response levy order must specify—

“(a) how the levy is to be spent; and

“(b) the persons primarily responsible for paying the levy; and

“(c) the persons, if any, exempt from paying the levy; and

“(d) on the rate of levy,—

“(i) whether there is to be a single rate or 2 or more different rates; and

“(ii) if there are to be 2 or more different rates, the things to which the different rates apply; and

“(iii) the maximum for each rate or rates; and

“(iv) whether a rate or rates are to be set initially at zero; and

“(v) the setting of the actual rate by the payee so that the agreed share of costs to be paid by producers is recovered; and

“(e) how the rate or rates of the levy and variations of the rate or rates are to be notified; and
“(f) when and how the levy is to be paid; and
“(g) the persons responsible for collecting the levy; and
“(h) the right of the persons collecting the levy to recover the cost of collecting it; and
“(i) the estimated amount of the cost of collecting the levy; and
“(j) for the purpose of ascertaining whether or not the order is being complied with,—
“(i) the keeping of accounts, statements, and records of a specified class or description by all or any of the persons responsible for collecting the levy, the persons responsible for paying it, and the payee; and
“(ii) the retention of the accounts, statements, or records for a specified period; and
“(k) for the purpose of resolving disputes about whether or not a person is required to pay the levy and the amount of levy a person is required to pay,—
“(i) the appointment of arbitrators; and
“(ii) the procedures to be followed by arbitrators; and
“(iii) the remuneration of arbitrators; and
“(l) the remuneration payable to an auditor appointed under section 100ZA.

“(2) A readiness or response levy order may specify—
“(a) the returns to be made to the payee for the purpose of enabling or assisting the determination of amounts of levy payable:
“(b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of the levy:
“(c) a method of paying the levy that may be used by persons who object on conscientious or religious grounds to paying the levy in the manner provided in the order:
“(d) a requirement for the payment of additional or increased levy when amounts of levy originally payable have
been paid late, paid in part, or not paid at all:

“(e) a requirement for the funds from which levy payments are to be made to the payee to be held on trust in a separate account.

“100Z Trust accounts for levy money

“(1) This section applies if a readiness or response levy order specifies a requirement that the funds from which levy payments are to be made to the payee must be held on trust in a separate account.

“(2) For the purposes of this section, the amount outstanding to the payee on a day by a person responsible for collecting the levy is calculated by subtracting the total of the levy payments that the person makes before that day to the payee from the total of the amounts that subsection (4) requires the person to deposit in the account not later than a day before that day.

“(3) A person responsible for collecting the levy must—

“(a) keep an account—

“(i) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and

“(ii) named in a way that identifies it as a trust account kept by the person responsible for collecting the levy; and

“(b) take all practicable steps to ensure that the account is used for holding only the amounts that subsection (4) requires to be deposited in it; and

“(c) take all practicable steps to ensure that the balance in the account on any day is not less than the amount outstanding to the payee on that day by the person; and

“(d) on ceasing to be a person responsible for collecting the levy, continue to keep the account until all the levy money payable to the payee for the period during which the person was responsible for collecting the levy has been paid.

“(4) A person responsible for collecting the levy must deposit amounts in the account by depositing an amount equal to the levy, calculated as specified in the readiness or response levy order, in the account—

“(a) on the day or days specified in the order; or

“(b) on a day or days calculated as specified in the order.

“(5) The following amount in the account is held on trust for the payee as levy money:

“(a) the amount outstanding to the payee on a day by a person responsible for collecting the levy; or

“(b) if the amount held is less than the amount outstanding, all the money in the account.
“(6) The amount in the account held on trust for the payee—

“(a) is not available for the payment of any other creditor of a person responsible for collecting the levy; and

“(b) is not liable to be attached or taken in execution at the instance of any other creditor of a person responsible for collecting the levy.

“100ZA Compliance audits for levy

“(1) This section applies while a readiness or response levy order is in force.

“(2) If the payee requests the Minister to do so, the Minister may appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:

“(a) 1 or more of the persons responsible for collecting the levy:

“(b) 1 or more of the persons responsible for paying the levy.

“(3) The purpose of the audit is to ascertain the following matters, to the extent to which they are relevant to the affairs being audited and to which it is practicable to ascertain them, and to report to the Minister on them:

“(a) the extent to which persons responsible for paying the levy are doing and have done so:

“(b) the extent to which appropriate amounts of the levy are being and have been paid:

“(c) the extent to which appropriate amounts of the levy are being and have been collected:

“(d) the extent to which appropriate amounts of the levy are being and have been paid over to the payee by the person collecting it:

“(e) the extent to which accounts, statements, and records are being and have been kept:

“(f) the extent to which the accounts, statements, and records kept are properly kept.

“(4) If an arbitrator has been appointed to resolve a dispute, the Minister may appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.

“(5) The purpose of the audit is to ascertain the matters of fact that are in dispute, to the extent to which it is practicable to ascertain them, and report them to the arbitrator, the persons involved, and the Minister.

“(6) A person is qualified for appointment as an auditor only if the person is—

“(a) a chartered accountant within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996; or

“(b) a member, fellow, or associate of an association of accountants that is—

“(i) constituted in a Commonwealth country outside New Zealand; and
“(ii) approved to audit company financial statements by the Minister of the Crown responsible under a warrant or as authorised by the Prime Minister for the administration of the Companies Act 1993; and

“(iii) named as approved under subparagraph (ii) in a notice published in the Gazette and current at the time of the appointment.

“(7) No officer or employee of any of the following may be appointed an auditor:

“(a) the payee:

“(b) a person responsible for collecting the levy:

“(c) a person responsible for paying the levy.

“(8) A person appointed as an auditor is entitled to receive from the payee the remuneration provided for in the order.

“100ZB Power of auditors to require production of documents

“(1) This section applies to an auditor appointed under section 100ZA.

“(2) The Minister may authorise the auditor, for the purposes of conducting an audit, to—

“(a) require the payee, a person responsible for collecting the levy, a person responsible for paying the levy, or an employee or officer of any of the preceding 3 persons to produce for inspection in a reasonable period specified by the auditor documents that—

“(i) are accounts, statements, or records; and

“(ii) are required to be kept by this Act or a levy order; and

“(iii) are in the possession or under the control of the payee or person; and

“(b) take copies of or extracts from the documents.

“(3) An authorisation under subsection (2) must—

“(a) be written; and

“(b) state the auditor’s full name; and

“(c) refer to this section; and

“(d) state the powers conferred on the auditor; and

“(e) state whether the powers are conferred specifically or generally.

“(4) An auditor who acts under an authorisation must not disclose any information the auditor obtains as a result of acting under it to any other person, except that the auditor may disclose information—

“(a) under section 100ZA(3) or (5):

“(b) to a Minister:
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“(c) to a person authorised by a Minister to receive it:
“(d) for the purposes of a prosecution under this Act:
“(e) for the purposes of an action for the recovery of an amount due under this Act.
“(5) The Official Information Act 1982 applies to information held by a Minister that was obtained under this section.

“100ZC Orders to be confirmed

“(1) Subsection (2) applies to a readiness or response levy order that—
“(a) is made on or after 1 January and before 1 July in the same year; and
“(b) is not revoked with effect before or on 1 July in the next year; and
“(c) is not stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
“(d) will not be stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.
“(2) The order is deemed to have been revoked at the close of 30 June in the next year unless it has been confirmed by an Act of Parliament passed before or on that day.

“(3) Subsection (4) applies to a readiness or response levy order that—
“(a) is made on or after 1 July and before or on 31 December in the same year; and
“(b) is not revoked with effect before or on 1 January in the year after the next year; and
“(c) is not stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.
“(4) The order is deemed to have been revoked at the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed before or on that day.”

38 Inspectors, authorised persons, and accredited persons

(1) Section 103(1)(b) is amended by omitting “strategy” and substituting “plan or a national pathway management plan”.

(2) Section 103(2)(b) is amended by omitting “strategy” and substituting “plan or a national pathway management plan”.

(3) Section 103(3) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”.

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(4) Section 103(7) is amended by omitting “(to be known as accredited persons)”.

39 New sections 105A to 105F inserted

The following sections are inserted after section 105:

“105A Call in of powers or functions

“(1) This section applies to the powers or functions in sections 19(2)(a), 26, 32, 33, 43, 122, 125, and 130 that an inspector or authorised person may exercise or carry out.

“(2) A chief technical officer may decide that the power must be exercised or the function carried out by the chief technical officer instead of by the inspector or authorised person.

“(3) The chief technical officer may not make a decision under subsection (2) if—

“(a) the inspector or authorised person has already exercised the power or carried out the function; and

“(b) the person affected by the exercise or carrying out knows that the inspector or authorised person has done so.

“(4) The chief technical officer may make a decision under subsection (2) if the officer considers that 1 or more of the following applies to the exercise of the power or the carrying out of the function:

“(a) it is likely to have effects on New Zealand's culture, economy, industry, environment, public health, animal health, or international trade:

“(b) it is likely to involve treatment or post-clearance management that—

“(i) will require or is likely to require significant resources; or

“(ii) will have or is likely to have significant budgetary implications; or

“(iii) will involve or is likely to involve technology, processes, or methods that are new:

“(c) it is likely to involve issues of a systemic nature:

“(d) it is likely to involve issues that increase risk to, complexity for, or the liability of, the Ministry:

“(e) it is likely to involve issues that have the potential to seriously affect the Ministry’s reputation:

“(f) it must be done urgently in circumstances in which there is insufficient time to follow normal decision making procedure.

“(5) A chief technical officer who makes a decision under subsection (2) must give a written notice to the inspector or authorised person—

“(a) stating that the chief technical officer will exercise the power or carry out the function; and
“(b) stating the ground in subsection (4) that applies.

“(6) A chief technical officer who makes a decision under subsection (2) may give a written notice to the person affected by the exercise of the power or the carrying out of the function—

“(a) stating that the chief technical officer will exercise the power or carry out the function; and

“(b) stating that the officer requires information from the person to enable the officer to exercise the power or carry out the function; and

“(c) requiring the person to provide the information that the officer specifies.

“(7) For the purposes of this section, the relevant provision must be read as if it said ‘chief technical officer’ instead of ‘inspector’ or ‘authorised person’.

“105B Appointment of auditors

“(1) The Director-General may appoint auditors under this Act.

“(2) The Director-General may appoint as auditors only those persons who have appropriate experience, technical competence, and qualifications relevant to the audits.

“(3) Auditors may, but need not, be persons who are employed under the State Sector Act 1988 or by a regional council.

“105C Audits

“(1) The Director-General must set terms of reference for audits.

“(2) Audits include examinations, investigations, and reviews.

“(3) Auditors conduct audits of the following kinds as to the previous and current positions and as to the likely future position:

“(a) audits of the effectiveness and appropriateness of standards issued under this Act in achieving the objectives of the standards:

“(b) audits of compliance with standards issued under this Act:

“(c) audits of the effectiveness and appropriateness of the Ministry’s internal systems and procedures for the administration of this Act:

“(d) audits of compliance with the Ministry’s internal systems and procedures for the administration of this Act:

“(e) audits of the exercise of powers or carrying out of functions or duties of statutory officers appointed under this Act:

“(f) audits of compliance with duties imposed by or under this Act:

“(g) audits of the performance of activities by persons who carry out activities for the purposes of this Act:

“(h) audits of the performance of activities by persons, and audits of systems, procedures, and facilities, to assess compliance with the requirements of this Act:
“(i) any other class or description of audit specified in regulations.

“105D Auditors’ general duties

“(1) An auditor must use his or her best endeavours to comply with and give effect to relevant performance or technical standards when exercising powers or carrying out functions or duties for the purposes of this Act.

“(2) An auditor must give the subject of the audit written notice of the audit and the terms of reference a reasonable time before the audit starts, unless giving notice would defeat the purpose of the audit.

“(3) The auditor must conduct the audit within the terms of reference.

“105E Auditors’ powers

“(1) An auditor may exercise the powers in this section for the purposes of an audit.

“(2) The Director-General may give the subject of the audit a written notice to appear before an auditor at a time and place specified in the notice.

“(3) If the Director-General acts under subsection (2), the auditor may require the subject of the audit to answer all questions relating to the audit put to the subject.

“(4) An auditor may examine the systems, processes, and records of the subject of the audit.

“(5) An auditor may enter a place of business where—

“(a) any thing of relevance to the audit is held or is likely to be held; or

“(b) any activity of relevance to the audit is carried out or is likely to be carried out; or

“(c) any document of relevance to the audit is held or is likely to be held.

“(6) At the place, the auditor may—

“(a) examine the thing, activity, or document:

“(b) inspect or take samples of any thing:

“(c) test or analyse, or arrange for the testing or analysis of, any thing:

“(d) inquire about, examine, and copy electronic or non-electronic documents or records about the application of this Act by or to the subject, whether held by the subject of the audit or by or on behalf of the subject:

“(e) remove documents or records to another place for the purpose of copying them for as long as is reasonably necessary to allow for their copying:

“(f) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in an electronic or non-electronic device or system.

“(7) This section does not override the privilege against self-incrimination.

“105F Auditors’ duties relating to power of entry
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“(1) An auditor may enter a place of business under section 105E(5) within or outside business hours but only at a reasonable time.

“(2) If an occupier of the place is present when the auditor enters the place, the auditor must—

“(a) identify himself or herself to an occupier of the place; and

“(b) if asked by an occupier to do so, produce evidence of identity.

“(3) If an occupier of the place is not present at any time while the auditor is at the place, the auditor must leave a prominent notice at the place stating—

“(a) the day and time when the entry was carried out; and

“(b) the auditor’s name and contact details.

“(4) If the auditor takes a document, article, or thing from the place when the auditor leaves it, the auditor must—

“(a) prepare a schedule that specifies—

“(i) the document, article, or thing taken; and

“(ii) the place where each document, article, or thing is to be held; and

“(b) ensure that an occupier of the place gets the schedule under subsection (5) or (6).

“(5) If it is practicable for the auditor to prepare at the place a schedule of what the auditor takes, the auditor must prepare and leave the schedule at the place.

“(6) If it is practicable for the auditor to prepare and leave a schedule of what the auditor takes but the occupier of the place consents to the auditor not doing so, or if it is not practicable for the auditor to do so, the auditor must—

“(a) leave a notice stating that—

“(i) the auditor has taken a document, article, or thing; and

“(ii) a schedule will be with an occupier of the place within 7 days of the date of entry; and

“(b) ensure that a schedule is with an occupier of the place within 7 days of the date of entry.”

40 Sections 107 to 107B substituted

Section 107 is repealed and the following sections are substituted:

“107 Power to detain for purpose of checking for uncleared risk goods

“(1) This section applies to the following persons:

“(a) a person to whom section 34(2) applies who does not comply with section 34(2):

“(b) a person who is in a biosecurity control area.

“(2) An inspector who suspects on reasonable grounds that the person may be in possession of uncleared risk goods may—
“(a) detain the person, for a period that is reasonable in the circumstances and no longer than 4 consecutive hours, to be searched by a constable:

“(b) use the force that is reasonably necessary to stop the person if he or she is moving:

“(c) use the force that is reasonably necessary to bring the person to a biosecurity control area if the person is not near a biosecurity control area:

“(d) use the force that is reasonably necessary to detain the person.

107A Power to detain for purpose of checking for unauthorised goods

An inspector who suspects on reasonable grounds that a person may be in possession of unauthorised goods may—

“(a) detain the person, for a period that is reasonable in the circumstances and no longer than 4 consecutive hours, to be searched by a constable:

“(b) use the force that is reasonably necessary to detain the person.

107B Power to detain for public health or law enforcement purposes

“(1) This section applies when—

“(a) a person in a biosecurity control area has arrived in New Zealand; and

“(b) an inspector has reasonable cause to suspect that the person—

“(i) is, under an enactment, liable to be detained because of an infectious disease; or

“(ii) is liable to be arrested under a warrant issued by a court or a registrar; or

“(iii) is liable to be prosecuted for an offence punishable by imprisonment; or

“(iv) has contravened the Civil Aviation Act 1990; or

“(v) has contravened the Customs and Excise Act 1996; or

“(vi) has contravened the Human Assisted Reproductive Technology Act 2004; or

“(vii) has contravened the Immigration Act 2009; or

“(viii) has contravened the Misuse of Drugs Act 1975; or

“(ix) has contravened the Passports Act 1992; or

“(x) has contravened the Terrorism Suppression Act 2002; or
“(xi) has contravened the Trade in Endangered Species Act 1989; or
“(xii) has contravened regulations under the United Nations Act 1946; or
“(xiii) has contravened an enactment that contains an offence involving the unlawful entry into New Zealand of a person, matter, or thing and that is specified for the purposes of this section by the Governor-General in Council; or
“(xiv) is endangering, or threatening to endanger, the life, health, or safety of a person or group of persons.

“(2) The inspector may direct the person to remain in the area for a period that is reasonable in the circumstances and no longer than 4 consecutive hours to—
“(a) allow the inspector to obtain the attendance of, or make inquiries of, a constable, bailiff, or employee or agent of a department who has the powers described in paragraph (b); and
“(b) allow the constable, bailiff, or employee or agent of a department to do what is necessary of the following:
“(i) question the person:
“(ii) ascertain or determine the status of the person:
“(iii) detain the person:
“(iv) arrest the person.

“(3) The person must comply with a direction given under this section.
“(4) Reasonable force may be used, if necessary, to keep the person in the area for the period directed under subsection (2).”

41 Power of inspection

(1) Section 109(1)(b) is amended by omitting “Managing or eradicating” and substituting “eradicating or managing”.

(2) Section 109(1)(c) is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

42 Section 114 substituted

Section 114 is repealed and the following section substituted:

“114 General powers

An inspector or authorised person who has lawfully entered a place under section 109 or 111 may do anything in, on, or in relation to the place that the inspector or authorised person considers necessary or expedient to—
“(a) eradicate or manage a pest or unwanted organism on the place:
“(b) prevent the spread of a pest or unwanted organism from or to the place:
“(c) avoid, remedy, or mitigate any effect on the place of non-compliance with a pathway management plan.”

43 New section 117A inserted

The following section is inserted after section 117:

“117A Seizure and detention of goods or documents as evidence for other enactments

“(1) An inspector exercising a power or carrying out a function or duty under Part 3 may seize and detain goods or documents presented to or located by the inspector in the circumstances described in subsection (2).

“(2) The circumstances are that the inspector must have reasonable grounds to suspect that the goods or documents are evidence of the commission of 1 or more offences under 1 or more of the following enactments:

“Constable to deal with
“(a) section 98C of the Crimes Act 1961:
“(b) section 342 of the Immigration Act 2009:
“(c) section 29A, 30, or 31 of the Passports Act 1992:

“Officer to deal with
“(d) the Customs and Excise Act 1996:
“(e) sections 123 and 124 of the Films, Videos, and Publications Classification Act 1993:
“(f) section 232 or 233 of the Fisheries Act 1996:

“(g) section 37 or 43 of the Medicines Act 1981:
“(h) the Trade in Endangered Species Act 1989:
“(i) enactments administered by the Ministry.

“(3) The inspector must, as soon as practicable, deliver the goods or documents into the custody of 1 of the following persons:

“(a) if the inspector believes that any of subsection (2)(a) to (c) applies to the goods or documents, a constable:

“(b) if the inspector believes that any of subsection (2)(d) to (i) applies to the goods or documents, an appropriately authorised officer who—

“(i) holds office under the Act specified in the paragraph; or

“(ii) is employed by the department that administers the Act.

“(4) The inspector may also deliver to the person, when delivering goods, a notice stating 1 of the following:

“(a) that the goods have been given a biosecurity clearance; or

“(b) that the goods—

“(i) have not been given a biosecurity clearance; and

“(ii) must be held, handled, or managed in the manner specified in the notice.
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“(5) Responsibility for goods delivered under subsection (3) passes to the person to whom the goods are delivered.

“(6) Section 199 of the Summary Proceedings Act 1957 applies with any necessary modifications to goods or documents detained under this section.”

44 Power to seize abandoned goods

Section 119(1) is amended by omitting “any restricted goods (where necessary disabling or killing them first), or any abandoned organism,” and substituting “any abandoned organism (where necessary disabling or killing it first)”.

45 Section 120 substituted

Section 120 is repealed and the following section substituted:

“120 Power to intercept risk goods

“(1) This section applies to an inspector or authorised person who believes on reasonable grounds that—

“(a) any of sections 25, 130, 131, 132, and 134(1), or a pathway management plan, has been contravened in relation to risk goods; and

“(b) a thing of any kind contains, or is likely to contain, some or all of the risk goods.

“(2) The inspector or authorised person may—

“(a) open the thing, using such force as is reasonable in the circumstances, and inspect the contents for the presence of risk goods:

“(b) stop a conveyance or craft for the purposes of paragraph (a).”

46 Power to examine organisms

(1) Section 121(1) is amended by inserting the following paragraph after paragraph (b):

“(ba) determining whether imported goods may be given a biosecurity clearance; or”.

(2) Section 121(1)(d) is amended by omitting “manage or eradicate” and substituting “eradicate or manage”.

(3) Section 121(1) is amended by omitting “that the inspector or authorised person believes on reasonable grounds may harbour pests or unwanted organisms”.

47 Power to apply article or substance to place

Section 121A(1) is amended by omitting “manage or eradicate” and substituting “eradicate or manage”.

48 Prohibition or control of certain tests

Section 121B(1)(a) is amended by omitting “effective management or eradication” and substituting “eradication or effective management”.

49 Power to give directions

Section 122(2) is repealed and the following subsection substituted:

“(2) An inspector or authorised person may direct the owner or person in charge of risk goods or a craft to take immediate steps to avoid, remedy, or mitigate an effect of non-compliance with a pathway management plan.”
50 Inspection of and intervention in transitional facilities and containment facilities

(1) Section 126(1) is amended by inserting “or section 11(1)(fc) of the Hazardous Substances and New Organisms Act 1996” after “section 39”.

Section 126(1) is amended by omitting “operator under section 40” and substituting “facility operator”.

Section 126(2)(a) is amended by omitting “type” and substituting “kind”.

Section 126(2)(b) is amended by omitting “operator of a transitional facility or containment facility” and substituting “facility operator”.

Section 126(3)(a) is amended by omitting “operator of the transitional facility or containment facility” and substituting “facility operator”.

Section 126(6) is amended by omitting “operator of the transitional facility or containment facility” and substituting “facility operator”.

51 Road blocks, cordons, check-points, etc.

(1) Section 132(2)(a) is amended by omitting “manage or eradicate” and substituting “eradicate or manage”.

Section 132(2)(d) is amended by omitting “management or eradication” from each place where it appears and substituting “eradication or management” in each place.

Section 132(8B) is amended by omitting “management or eradication” and substituting “eradication or management”.

52 Options for cost recovery

Section 135(1) is amended by omitting “strategy” and substituting “plan or pathway management plan”.

53 Levies

Section 137 is amended by adding the following subsection:

“(3) The fact that a readiness or response levy is payable to the Director-General under section 100W does not prevent the imposition of a levy under this section—

“(a) for the purpose of wholly or partly funding the same readiness or response activity; and

“(b) on producers not represented by an organisation that is a party to the government/industry agreement.”

54 Power of Auditors to require production of statements and records

The following subsection is added to section 141D:

“(5) A person who is the subject of a requirement of an auditor under subsection (1) must comply with the requirement.”

55 New cross headings and sections 142A to 142T inserted

The following cross headings and sections are inserted after section 142:

“Biosecurity database

“142A Establishment

“(1) The Director-General may establish and maintain a biosecurity database
containing information about land for the purposes of this Act.

“(2) The database may be in any form that the Director-General thinks fit, including an electronic form that—

“(a) records or stores information electronically; and

“(b) permits the information to be readily inspected; and

“(c) permits the information to be readily reproduced; and

“(d) permits the information to be accessed by remote log-on access or any other electronic means.

“(3) The database may record all or some of the following information about land:

“(a) legal description:

“(b) valuation:

“(c) land use:

“(d) the name and contact details of the owner:

“(e) the name and contact details of the occupier.

“(4) The database may contain any other information about land that the Director-General considers useful.

“(5) The information in the database must come from all or some of the following sources:

“(a) information in the public domain:

“(b) information provided voluntarily for inclusion in the database by a person to whom the information relates or by the person's agent:

“(c) information provided or made available to the Director-General or the Ministry under this Act or any other Act.

“(6) The fact that information is on the biosecurity database because it is provided or made available to the Director-General or the Ministry under another Act does not affect any aspect of the handling of the information under the other Act.

“142B Information from local authorities

“(1) This section applies to information to which both the following apply:

“(a) it comes from the database that is required to be kept by a local authority under section 27 of the Local Government (Rating) Act 2002; and

“(b) it is of the kind described in section 142A(3).

“(2) Local authorities must provide the information, or make it available,—

“(a) to the Director-General; and

“(b) for inclusion in the biosecurity database; and

“(c) either—

“(i) in accordance with a timetable set by the Director-General; or

“(ii) when the Director-General requires its provision or availability; and

“(d) free of any charge except the actual and reasonable costs of transferring the information.
“(3) The Local Government (Rating) Act 2002 does not prevent a local authority from complying with this section.

“142C Access, use, or disclosure

“(1) For information on the biosecurity database that comes from the public domain, the Director-General may—

“(a) access, use, or disclose it for any lawful purpose:

“(b) authorise other persons to access and use it for any lawful purpose.

“(2) For information on the biosecurity database that comes from any other source,—

“(a) the Director-General may—

“(i) access, use, or disclose it for the purposes of this Act:

“(ii) authorise other persons to access and use it for the purposes of this Act; or

“(b) the person to whom the information relates or the person’s agent may give written authorisation for access to it and use and disclosure of it for a purpose specified in the authorisation.

“(3) The Director-General must—

“(a) establish and maintain a register that lists all enactments of the following kinds:

“(i) an enactment containing a provision expressly allowing access to, use of, or disclosure of information on the biosecurity database:

“(ii) an enactment containing a provision under which the Director-General may make an agreement allowing a person access to, use of, or disclosure of information on the biosecurity database:

“(iii) an enactment containing a provision under which the Director-General has made an agreement allowing a person access to, use of, or disclosure of information on the biosecurity database; and

“(b) ensure that the register is available for public information and inspection at the Ministry during normal office hours.

“142D Person may require Director-General not to access, use, or disclose information

“(1) A person whose information is on the biosecurity database may request the Director-General not to access, use, or disclose the following information about the person:

“(a) his or her name:

“(b) his or her postal address:
“(c) his or her other personal
contact details.

“(2) The person—
“(a) must make the request in
writing; and
“(b) is not required to provide
reasons for the request.

“(3) The Director-General must comply
with the request.

“(4) The person may later inform
the Director-General that the
person withdraws his or her
request.

“142E Voluntary provision of information
Sections 142A to 142D do not
prevent—
“(a) a person giving the
Director-General information if
the person wishes to do so; or
“(b) the Director-General using
the information for any lawful
purpose.

“Automated electronic systems

“142F Arrangement for system
“(1) The Director-General may arrange
for the use of an automated electronic
system to do the actions described in
subsection (2) that this Act or another
enactment allows or requires the
persons described in subsection (3) to
do.

“(2) The actions are—
“(a) exercising a power:
“(b) carrying out a function:
“(c) carrying out a duty:
“(d) making a decision,
including making a decision by—
“(i) analysing
information that the
Director-General holds
or has access to about a
person, goods, or craft;
and
“(ii) applying criteria
predetermined by the
Director-General to the
analysis:
“(e) doing an action for the
purpose of exercising a power,
carrying out a function or duty,
or making a decision:
“(f) communicating
the exercising of a power,
carrying out of a function or duty,
or making of a decision.

“(3) The persons are—
“(a) the Director-General:
“(b) inspectors:
“(c) chief technical officers:
“(d) authorised persons:
“(e) accredited persons:
“(f) assistants of inspectors or
authorised persons.

“(4) The Director-General may make an
arrangement only if satisfied that—
“(a) the system has the capacity
to do the action with
reasonable reliability; and
“(b) a process is available under
which a person affected by an
action done by the system can
have the action reviewed by a
person described in subsection (3).

“(5) A system used in accordance with an arrangement may include components outside New Zealand.

“(6) The Director-General must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information.

“142G Effect of use of system

“(1) This section applies to an action done by an automated electronic system.

“(2) An action allowed or required by this Act done by the system—

“(a) is treated as an action done properly—

“(i) by the person referred to in section 142F(3); or

“(ii) under the properly delegated authority of the Director-General; and

“(b) is not invalid by virtue only of the fact that it is done by the system.

“(3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action—

“(a) is treated as an action done properly—

“(i) by the person referred to in section 142F(3); or

“(ii) under the properly delegated authority of the Director-General; and

“(b) is not invalid by virtue only of the fact that it is done by the system.

“(4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in section 142F(3).

“Risk profiling

“142H Retention and use of information for risk profiling

“(1) Subsections (2) and (3) apply to information—

“(a) provided to the Director-General under this Act; or

“(b) disclosed to the Director-General by a border sector agency; or

“(c) held by the Director-General after coming to the Director-General from another source.

“(2) The Director-General may collect, retain, analyse, process, or use information for the purpose of developing—

“(a) an assessment of the risk that goods or persons may present in future:

“(b) criteria for the exercise of powers or the carrying out of functions under this Act.
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“(3) A person exercising powers or carrying out duties or functions under this Act may apply a risk assessment or criteria developed under subsection (2).

“(4) This section does not apply to information in the biosecurity database.

“Disclosure of personal information

“142I Disclosure of personal information in New Zealand

“(1) This section applies to personal information—

“(a) provided to the Director-General under this Act; or
“(b) disclosed to the Director-General by a border sector agency; or
“(c) held by the Director-General after coming to the Director-General from another source.

“(2) The Director-General may disclose the information to agencies in New Zealand to facilitate the carrying out by the agencies of—

“(a) the prevention, detection, investigation, prosecution, and punishment of offences:
“(b) the enforcement of a law imposing a pecuniary penalty:
“(c) the protection of the life, health, or safety of a person or group of persons:
“(d) the protection of the environment:
“(e) the protection of public revenue:
“(f) the maintenance of border security:
“(g) the achievement of the purposes of this Act.

“(3) This section does not apply to information in the biosecurity database.

“142J Disclosure of personal information outside New Zealand

“(1) This section applies to personal information—

“(a) provided to the Director-General under this Act; or
“(b) disclosed to the Director-General by a border sector agency; or
“(c) held by the Director-General after coming to the Director-General from another source.

“(2) The Director-General may disclose the information to agencies overseas to facilitate the carrying out by the agencies of—

“(a) the prevention, detection, investigation, prosecution, and punishment of offences:
“(b) the enforcement of a law imposing a pecuniary penalty:
“(c) the protection of the life, health, or safety of a person or group of persons:
“(d) the protection of the environment:
“(e) the protection of public revenue:
“(f) the maintenance of border security:
“(g) the achievement of the purposes of this Act.

“(3) The disclosure must be made under an arrangement made between the Director-General and the agency overseas to which subsections (4) to (6) apply.

“(4) The Director-General may make an arrangement only if satisfied that it is justified to help prevent, identify, or respond to—

“(a) contraventions of New Zealand law; or
“(b) contraventions of the overseas country’s law; or
“(c) actions that it is the function of the agency to which the information is disclosed to prevent, identify, or respond to.

“(5) An arrangement—

“(a) must be in writing; and
“(b) must state criteria for the disclosure of information under it; and
“(c) must state the use that the agency to whom the information is disclosed may make of the information; and
“(d) must—

“(i) prohibit the agency from disclosing the information to any other agency; or
“(ii) specify the other agencies to whom the agency may disclose the information, the extent to which the agency may disclose the information, and conditions subject to which the agency may disclose the information; and
“(e) may state—

“(i) the form in which the information may be disclosed:
“(ii) the method by which the information may be disclosed; and
“(f) may be varied.

“(6) The Director-General—

“(a) must consult the Privacy Commissioner before entering into an arrangement, or varying an arrangement, involving the disclosure of personal information; and
“(b) must, if the Privacy Commissioner requires the Director-General to undertake a review of the arrangement and the arrangements for disclosure under it and it is at least 12 months since the last review,—

“(i) undertake the review; and
“(ii) report the result to the Privacy Commissioner as soon as practicable after concluding the review.

“(7) This section does not apply to information in the biosecurity database.
“142K Disclosure of personal information outside New Zealand: urgent action required

“(1) The Director-General may disclose personal information to a person overseas if—

“(a) a situation arises requiring urgent action; and

“(b) the requirements of this section are satisfied.

“(2) The first requirement is that the powers, functions, or duties of the overseas person include—

“(a) helping to investigate, prevent, identify, or respond to non-compliance with the law in New Zealand or in the overseas country; or

“(b) responding to difficulties arising in the course of trade between New Zealand and the overseas country.

“(3) The second requirement is that the information is disclosed subject to conditions that—

“(a) state the use that the overseas person may make of the information disclosed; and

“(b) state whether or not the overseas person may disclose the information disclosed to any other person; and

“(c) if the overseas person may disclose any of the information disclosed to any other person, state—

“(i) the persons to whom the overseas person may disclose it; and

“(ii) the extent to which the overseas person may disclose it; and

“(iii) the conditions subject to which the overseas person may disclose it.

“(4) The third requirement is that the Director-General makes and keeps a record of—

“(a) the information that was disclosed; and.

“(b) the person to whom it was disclosed; and

“(c) any conditions subject to which it was disclosed.

“(5) The Director-General must make the records kept under subsection (4) available to the Privacy Commissioner if the Privacy Commissioner asks to see them.

“(6) This section does not apply to information in the biosecurity database.

"Incorporation by reference"

“142L Definitions for sections 142M to 142T

In sections 142M to 142T,—

“biosecurity document means—

“(a) regulations:

“(b) Orders in Council:

“(c) standards issued under this Act:

“(d) notices issued under this Act
“(e) instruments made under
Part 5
“incorporated means incorporated by reference
“inspection site means—
“(a) the head office of the Ministry:
“(b) any other place determined by the Director-General
“material means, except in section 142O, —
“(a) the original material:
“(b) the original material with amendments incorporated:
“(c) material that amends the original material:
“(d) material that replaces the original material
“standard work of reference means a work of reference that the Director-General considers is accepted internationally or by an industry as a standard one to refer to on its subject matter.

“142M Incorporation in biosecurity documents
“(1) The following written material may be incorporated in a biosecurity document:
“(a) standards, requirements, or recommended practices of international or national organisations:
“(b) standards, requirements, or recommended practices prescribed in any country or jurisdiction:
“(c) material that is from any other source, deals with technical matters, and is too large to include in, or print as part of, the biosecurity document:
“(d) material that is from any other source and deals with technical matters and that it would be impractical to include in, or print as part of, the biosecurity document.

“(2) Material may be incorporated—
“(a) wholly or partly; and
“(b) with modifications, additions, or variations specified in the biosecurity document.

“(3) Material incorporated in a biosecurity document has legal effect as part of the document.

“142N Requirement to consult on proposal to incorporate material
“(1) This section applies if it is proposed to incorporate material in a biosecurity document.
“(2) The Director-General must make the material available in 1 or more of the following ways:
“(a) making it available for reading free of charge during working hours at the inspection sites:
“(b) making it available for reading free of charge in any
other way determined by the Director-General:

“(c) if it is possible to do so without infringing copyright, making it available free of charge—

“(i) on an internet site maintained by or on behalf of the Ministry;

“(ii) by providing a hypertext link from an internet site maintained by or on behalf of the Ministry to an internet site maintained by or on behalf of someone else where the material is available free of charge:

“(d) if it is possible to do so without infringing copyright, making copies of the material available for purchase.

“(3) The Director-General must—

“(a) give public notice stating that—

“(i) the material is proposed for incorporation in a biosecurity document; and

“(ii) the material is available in the way or ways in which the Director-General has made it available; and

“(iii) public comment on the proposal to incorporate the material may be made to the Director-General; and

“(b) allow a reasonable opportunity for the public to comment on the proposal; and

“(c) consider any comments made.

“(4) If the material is not in an official New Zealand language, an accurate translation of the material into an official New Zealand language must also be available in each of the circumstances described in subsection (2).

“(5) Failure to comply with this section does not invalidate a biosecurity document that incorporates material.

“142O Effect of amendments to, or replacement of, material incorporated

“(1) Material that amends or replaces material incorporated in a biosecurity document has legal effect as part of the document only if the Director-General publishes a notice under subsection (2).

“(2) The Director-General may publish a notice in the Gazette that—

“(a) states that the material has legal effect as part of the document; and

“(b) specifies the date on which the material has legal effect as part of the document.

“(3) Subsection (1) does not apply if the biosecurity document expressly says that it does not apply.

“142P Proof of material incorporated
“(1) A copy of material incorporated in a biosecurity document must be—

“(a) certified as a correct copy of the material by the Director-General; and

“(b) retained by the Ministry.

“(2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the biosecurity document of the material.

“142Q Effect of expiry of material incorporated

“(1) Material incorporated in a biosecurity document that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the document only if the Director-General publishes a notice under subsection (2).

“(2) The Director-General may publish a notice in the Gazette that—

“(a) states that the material ceases to have legal effect as part of the document; and

“(b) specifies the date on which the material ceases to have legal effect as part of the document.

“(3) Subsection (1) does not apply if the biosecurity document expressly says that it does not apply.

“142R Access to material incorporated

“(1) The Director-General must make material incorporated in a biosecurity document available in 1 or more of the following ways:

“(a) making it available for reading free of charge during working hours at the inspection sites:

“(b) making it available for reading free of charge in any other way determined by the Director-General:

“(c) if it is possible to do so without infringing copyright, making it available free of charge—

“(i) on an internet site maintained by or on behalf of the Ministry:

“(ii) by providing a hypertext link from an internet site maintained by or on behalf of the Ministry to an internet site maintained by or on behalf of someone else where the material is available free of charge:

“(d) if it is possible to do so without contravening copyright, making copies of the material available for purchase.

“(2) The Director-General must give public notice stating that—

“(a) the material is incorporated in the biosecurity document; and

“(b) the material is available in the way or ways in which the Director-General has made it available.

“(3) If the material is not in an official New Zealand language, an accurate translation of the material into an
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official New Zealand language must also be available in each of the circumstances described in subsection (1).

“(4) Failure to comply with this section does not invalidate a biosecurity document that incorporates material.

“142S Effect of other enactments


“(2) In relation to the Regulations (Disallowance) Act 1989,—

“(a) it applies to regulations that incorporate material; and

“(b) its section 4 does not require material incorporated in regulations to be presented to the House of Representatives.

“(3) Sections 22 to 25 of the Standards Act 1988 are not affected by sections 142L to 142R.

“142T Latest standard work of reference or register

“(1) A reference in a biosecurity document to the current edition of a specified standard work of reference must be read as a reference to the latest edition of the work available at the time of reading, together with any changes made to it up to that time.

“(2) A reference in a biosecurity document to a specific edition of a specified standard work of reference means that the specific edition must be used.

“(3) A reference in a biosecurity document to a register established by or under this Act must be read as a reference to the version of the register available at the time of reading.”

56 Purpose of Part 7

Section 143 is amended by omitting “management, or eradication” and substituting “eradication, or management”.

57 Declaration of biosecurity emergency

(1) Section 144(1)(a)(iv) is amended by omitting “strategy” and substituting “plan”.

(2) Section 144(1)(b) is amended by omitting “manage, or eradicate” and substituting “eradicate or manage”.

(3) Section 144(1)(b) is amended by omitting “effectively managed, or eradicated” and substituting “eradicated or effectively managed”.

58 Emergency powers

(1) Section 145(1) is amended by omitting “managing, or eradicating” and substituting “eradicating or managing”.

(2) Section 145(2) is amended by omitting “eradicating, or limiting” and substituting “eradicating or limiting”.

59 Section 146 substituted

Section 146 is repealed and the following section substituted:

“146 Duration of emergency

“(1) A declaration of biosecurity emergency ceases to have effect at the end of 4 months after it comes into force, unless subsection (2) or (3) applies.
“(2) Before a declaration ceases to have effect, it may be extended by—

“(a) another proclamation under section 144; or

“(b) a resolution of the House of Representatives.

“(3) If a declaration is extended under subsection (2)(a), subsection (1) applies to it.

“(4) If a declaration is extended under subsection (2)(b), it is extended for the period stated in the resolution.

“(5) Before a declaration ceases to have effect, it may be revoked by a resolution of the House of Representatives.

“(6) An extension under this section must be published as provided in section 144(5).”

60 Biosecurity emergency regulations

Section 150 is amended by omitting “management, or eradication” from each place where it appears and substituting “eradication or management” in each place.

61 Sections 154 to 154N substituted and cross headings inserted

Section 154 is repealed and the following cross headings and sections are substituted:

“Compliance orders

154 Scope

“(1) An inspector or authorised person may make a compliance order against a person.

“(2) In subsection (3), biosecurity law means—

“(a) this Act;

“(b) regulations;

“(c) instruments made under Part 5:

“(d) any thing done under this Act that applies generally:

“(e) any thing done under this Act that applies specifically to the person.

“(3) A compliance order may—

“(a) require the person to cease doing something that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or

“(b) prohibit the person from starting something that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or

“(c) prohibit the person from doing something again that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or

“(d) prohibit the person from having something done on the person's behalf that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or

“(e) prohibit the person from having something done on the person's behalf again that, in the opinion of the inspector or authorised person, contravenes
or is likely to contravene biosecurity law; or
“(f) require the person to do something that, in the opinion of an inspector or authorised person, is necessary to ensure that the person complies with biosecurity law.

“154A Content
A compliance order must state—
“(a) the name of the person against whom it is made; and
“(b) the reasons why the inspector or authorised person made it; and
“(c) the requirement or prohibition in section 154(3) ordered by the inspector or authorised person; and
“(d) either,—
“(i) for a requirement, the period, if any, within which the requirement is to be achieved, which must start on the day on which the order is served and end after a time that is reasonable for the achievement of the requirement; or
“(ii) for a prohibition, the time and date, if any, from which the prohibition is to take effect; and
“(e) the conditions, if any, imposed by the inspector or authorised person; and
“(f) the consequences of not complying with the order; and
“(g) the rights of appeal in section 154E; and
“(h) the name and address of the agency whose inspector or authorised person made the order.

“154B Service
“(1) An inspector or authorised person who makes a compliance order must ensure that it is served on the person against whom it is made.
“(2) A compliance order may be served by—
“(a) delivering it personally to the person:
“(b) delivering it to the person at the person’s usual or last-known place of residence or business:
“(c) sending it by fax or email to the person’s fax number or email address:
“(d) posting it in a letter addressed to the person at the person’s usual or last known place of residence or business.
“(3) The following provisions apply to service as described in subsection (2):
“(a) service on an officer of a body, or on the body’s registered office, is deemed to be service on the body:
“(b) service on any of the partners in a partnership is deemed to be service on the partnership:
“(c) service by post is deemed to occur at the time at which the order would have been delivered in the ordinary course of the post.

“154C Compliance

The person against whom a compliance order is made must—

“(a) comply with the order; and
“(b) do so within the period stated in the order, if a period is stated; and
“(c) pay all the costs and expenses of complying with the order, unless the order states otherwise.

“154D Change or cancellation

“(1) A compliance order may be changed or cancelled under subsection (2) or cancelled under subsection (3) by the body that appointed the inspector or authorised person who made the order.

“(2) If the body receives a written application from the person against whom the order was made to change or cancel the order, it—

“(a) must consider the application as soon as practicable, having regard to—
“(i) the purpose for which the order was made; and
“(ii) the effect of a change or cancellation on the purpose; and
“(iii) any other matter the body thinks fit:

“(b) may confirm, change, or cancel the order:
“(c) must give the person against whom the order was made written notice of the confirmation, change, or cancellation.

“(3) The body—

“(a) may cancel the order if it considers that the order is no longer required; and
“(b) must give the person against whom the order was made written notice of the cancellation.

“154E Appeals

“(1) The following persons may appeal to a District Court:

“(a) the person against whom a compliance order is made under section 154:
“(b) a person whose application under section 154D(2) did not succeed.

“(2) The appeal must be made under the rules of procedure under the District Courts Act 1947.

“(3) The District Court may confirm, change, or cancel the order.

“(4) A party to an appeal may appeal to the High Court on a question of law.

“(5) The High Court Rules and sections 74 to 78 of the District Courts Act 1947 apply to an appeal under subsection (4)—

“(a) as if it were an appeal under section 72 of the District Courts Act 1947; and
“(b) with all necessary modifications.

“(6) A party to an appeal under subsection (4) may appeal to the Court of Appeal or the Supreme Court against a determination of the High Court on a question of law, with the leave of the court appealed to, and subject to section 14 of the Supreme Court Act 2003.

“(7) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.

“154F Effect of appeal

An appeal under section 154E has the following effects:

“(a) the body referred to in section 154D(1) must not cancel the order while the order is the subject of an appeal or while the time for the person’s appeal rights is running; and

“(b) the person who appeals must comply with the order if compliance is required as the result of the person exercising the person’s appeal rights.

“Pecuniary penalties

“154G Pecuniary penalty order

“(1) The Director-General may apply to the High Court for an order that a person pay the Crown a pecuniary penalty under this Act.

“(2) The Court may make the order if it is satisfied that the person failed to comply with—

“(a) section 16A:

“(b) section 16B(1):

“(c) section 18(1)(b):

“(d) section 22AB(4):

“(e) section 25(1), (2), or (8):

“(f) a condition imposed under section 27A:

“(g) section 29(1):

“(h) a condition imposed under section 29(2):

“(i) section 40(6):

“(j) section 52:

“(k) section 53:

“(l) section 130(4):

“(m) section 134(1):

“(n) regulations made under section 150 that provide that a contravention of them gives rise to civil liability:

“(o) any directions or requirements under Part 7:

“(p) any of the following requirements, if the requirement has been prescribed by regulations as a requirement for which a contravention gives rise to civil liability:

“(i) a requirement in regulations:

“(ii) a requirement in a rule.

“(3) The Court must not make the order if the person satisfies the Court—

“(a) that the failure was necessary for the purpose of—
“(i) saving or protecting life or health, preventing serious damage to property, or avoiding an actual or likely adverse effect on a natural and physical resource or human health; and
“(ii) the person's conduct was reasonable in all the circumstances; and
“(iii) the person took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the failure after it occurred; or
“(b) that the following apply:
“(i) the failure was due to an event beyond the person's control, including natural disaster, mechanical failure, or sabotage; and
“(ii) the person could not reasonably have foreseen the event; and
“(iii) the person could not reasonably have taken steps to prevent the event occurring; and
“(iv) the person took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the failure after the event occurred; or
“(c) that the person did not know, and could not reasonably have known, of the failure.
“(4) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.
“(5) The Director-General may apply for an order of the Court to obtain discovery and administer interrogatories

“154H Liability of principals and employers
“(1) Subsections (2) and (3) apply if the person who is liable under section 154G(2) was acting as the agent or employee of another person at the time of the non-compliance.
“(2) The other person is liable under section 154G in the same manner and to the same extent as if he or she had personally failed to comply, if it is proved—
“(a) that the act or omission that constituted the non-compliance took place with his or her authority, permission, or consent; or
“(b) that he or she knew that the non-compliance was occurring or was to occur and failed to take all reasonable steps to prevent or stop it.
“(3) The liability described in subsection (2) does not affect the liability described in subsection (1).
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“(4) A court that makes an order under section 154G against a body corporate may also make an order against every director or person concerned in the management of the body corporate if it is proved—

“(a) that the act or omission that constituted the non-compliance took place with the director or person’s authority, permission, or consent; or

“(b) that the director or person knew that the non-compliance was occurring or was to occur and failed to take all reasonable steps to prevent or stop it.

“154I Amount

“(1) In determining the appropriate amount of a pecuniary penalty under section 154G, the Court must have regard to all relevant matters, including—

“(a) the nature and extent of the contravention:

“(b) the nature and extent of loss or damage suffered by a person, a natural and physical resource, or human health as a result of the contravention:

“(c) the circumstances in which the contravention took place:

“(d) whether or not the person has been found in previous proceedings under this Act to have engaged in similar conduct:

“(e) the steps taken by the person to bring the contravention to the attention of the appropriate authority:

“(f) the steps taken by the person to avoid, remedy, or mitigate the effects of the contravention.

“(2) Subsections (3) to (7) state the limits on the amounts of pecuniary penalty that the Court may order.

“(3) For an individual, the limit is $500,000.

“(4) For a body corporate,—

“(a) subsection (5) states the limit that applies if—

“(i) the Court is satisfied that the contravention occurred in the course of producing a commercial gain; and

“(ii) the commercial gain can be readily ascertained:

“(b) subsection (6) states the limit that applies if—

“(i) the Court is satisfied that the contravention occurred in the course of producing a commercial gain; and

“(ii) the commercial gain cannot be readily ascertained:

“(c) subsection (7) states the limit that applies if the Court is not satisfied that the contravention occurred in the course of producing a commercial gain.

“(5) For the purposes of subsection (4)(a), the limit is the greater of—

“(a) $10,000,000; and
“(b) 3 times the value of the commercial gain resulting from the contravention.

“(6) For the purposes of subsection (4)(b), the limit is the greater of—

“(a) $10,000,000; and

“(b) 10% of the turnover of the body corporate and all of its interconnected bodies corporate (if any) (interconnected and turnover having the meanings they have in the Commerce Act 1986).

“(7) For the purposes of subsection (4)(c), the limit is $10,000,000.

“154J Other orders instead of or in addition to pecuniary penalty order

In proceedings under section 154G, the Court may, instead of or in addition to making a pecuniary penalty order, make—

“(a) an order that the person mitigate or remedy any adverse effects, on persons or a natural and physical resource, that are caused by or on behalf of the person:

“(b) an order that the person mitigate or remedy any adverse effects, on persons or a natural and physical resource, that relate to land owned or occupied by the person:

“(c) an order that the person pay the costs of mitigating or remedying the adverse effects referred to in paragraph (a) or (b).
question, the defendant did not have the information required to answer the question in the person’s knowledge, possession, or control.

“(6) The defendant also has a defence if the defendant proves that—

“(a) the action or event to which the prosecution relates was due to—

“(i) the act or omission of another person; or
“(ii) an accident; or
“(iii) some other cause or circumstance outside the defendant’s control; and

“(b) the defendant took all reasonable precautions and exercised due diligence to avoid—

“(i) the commission of the particular offence; or
“(ii) the commission of offences of the same kind.

“(7) The defences in subsections (4) to (6) are available only if the defendant—

“(a) prepares a written notice for the prosecutor that—

“(i) states the defendant’s intention to rely on the defence; and
“(ii) includes the facts that support the defence; and

“(b) gives the notice to the prosecutor—

“(i) at least 15 working days before the hearing date; or
“(ii) within another time that the court allows.

“Penalty: section 157(5)

“(8) The penalty for the offence is in section 157(5).

“154M Section 154M offences

“Rules for section 154M offences

“(1) The offences in this section are strict liability offences.

“(2) The prosecution is not required to prove that the defendant intended to commit an offence.

“(3) The defendant has a defence if the defendant proves that—

“(a) the action or event to which the prosecution relates was due to—

“(i) the act or omission of another person; or
“(ii) an accident; or
“(iii) some other cause or circumstance outside the defendant’s control; and

“(b) the defendant took all reasonable precautions and exercised due diligence to avoid—

“(i) the commission of the particular offence; or
“(ii) the commission of offences of the same kind.
“(4) The defendant also has a defence if the defendant proves that—

“(a) the defendant’s action was necessary for the purpose of—

“(i) saving or protecting life or health; or

“(ii) preventing serious damage to property; or

“(iii) avoiding an actual or likely adverse effect on a natural and physical resource or human health; and

“(b) the defendant’s action was reasonable in all the circumstances; and

“(c) the defendant took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the action after it occurred.

“(5) The defences in subsections (3) and (4) are available only if the defendant—

“(a) prepares a written notice for the prosecutor that—

“(i) states the defendant’s intention to rely on the defence; and

“(ii) includes the facts that support the defence; and

“(b) gives the notice to the prosecutor—

“(i) at least 15 working days before the hearing date; or

“(ii) within another time that the court allows.

“Penalty: section 157(3)

“(6) A person commits an offence against this Act who fails to comply with any of section 18, 19, 25, 29(1), 30(2), 35(1), (3), (7), and (7), 35A, 40(6), 51(1), and 121B(2).

“(7) A person commits an offence against this Act who fails to comply with a condition imposed under section 27A or 29(2).

“(8) A person commits an offence against this Act who fails to comply with section 16A.

“Penalty: section 157(4)

“(9) A person commits an offence against this Act who fails to comply with section 134(1)(b) or (1A).

“(10) A person commits an offence against this Act who fails to comply with a reasonable requirement made of him or her in accordance with and for the purposes of this Act by—

“(a) an official; or

“(b) an automated electronic system.

“(11) A person commits an offence against this Act who fails to comply with a reasonable direction given to him or her in accordance with and for the purposes of this Act by—

“(a) an official; or

“(b) an automated electronic system.

“(12) A person commits an offence against this Act who fails to comply with a compliance order.

“Penalty: section 157(5)
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“(13) A person commits an offence against this Act who fails to comply with—

“(a) any of sections 17, 34, 36, 51(3), 121(2), 121A(3), 132(9), and 141D(5):

“(b) a requirement imposed under section 100L(2)(a) by an auditor acting under an authorisation:

“(c) regulations made under section 165(2) or (3).

“(14) A person commits an offence against this Act who—

“(a) fails to make the declaration required by section 22(5)(c), if the import health standard requires that a declaration be made:

“(b) makes a false declaration under section 22(5)(c), if the import health standard requires that a declaration be made.

“(15) A person commits an offence against this Act who—

“(a) fails to make the declaration required by section 22AE(3)(b) or 22AF(7)(b):

“(b) makes a false declaration under section 22AE(3)(b) or 22AF(7)(b).

“(16) A person commits an offence against this Act who fails to keep statements, accounts, or records of leviable activity carried on by the person sufficient to satisfy the requirements of an order made under any of sections 100G, 100W, and 137.

“(17) A person commits an offence against this Act who fails to maintain statements, accounts, or records of leviable activity carried on by the person to a sufficient standard to satisfy the requirements of an order made under any of sections 100G, 100W, and 137.

“(18) A person commits an offence against this Act in the following circumstances:

“(a) the person operates or purports to operate a transitional facility or a containment facility; and

“(b) the person—

“(i) is not approved as the facility operator of the facility; or

“(ii) has had the person's approval as the facility operator of the facility suspended; or

“(iii) operates or purports to operate a facility that does not have a facility approval; or

“(iv) operates or purports to operate a facility that has had its facility approval suspended; or

“(v) does not comply with the operating standards for the facility.

“(19) A person commits an offence against this Act who fails to comply with a rule in a national pest management
plan or a national pathway management plan that specifies that a contravention of the rule creates an offence against this Act.

“(20) A person commits an offence against this Act who fails to comply with a rule in a regional pest management plan or a regional pathway management plan that specifies that a contravention of the rule creates an offence against this Act.

“(21) A person commits an offence against this Act who—

“(a) is in a biosecurity control area; and

“(b) is asked a question by an inspector or an automated electronic system for the purpose of the inspector or the system ascertaining the presence, nature, origin, or itinerary of risk goods; and

“(c) fails—

“(i) to answer the question within a reasonable time of its being asked; or

“(ii) to answer the question completely within a reasonable time of its being asked.

“Penalty: section 157(7)

“(22) A person commits an offence against this Act who erroneously declares that he or she is not in possession of any or all of the goods specified in a declaration that the person is required to make about the goods.

“Penalty: section 157(1)

“(1) A person commits an offence against this Act who fails to comply with any of sections 46, 52, 53, and 134(1)(a).

“(2) A person commits an offence against this Act who threatens, assaults, or intentionally obstructs or hinders an official exercising a power or carrying out a function or duty under a law.

“(3) A person commits an offence against this Act who intentionally obstructs or hinders an automated electronic system doing an action under section 142F(2).

“(4) A person commits an offence against this Act who knowingly damages or impairs an automated electronic system.

“(5) A person commits an offence against this Act who, in connection with the purposes of this Act, makes a statement or gives information that the person knows to be false or misleading in a material particular to—

“(a) an official; or

“(b) an automated electronic system.

“(6) A person commits an offence against this Act who wilfully withholds relevant information that the person is required by a law to provide in connection with the purposes of this Act from—

“(a) an official; or

“(b) an automated electronic system.

“(7) A person commits an offence against this Act who, in connection with the purposes of this Act,
“(a) knowingly makes a return that the person is required by a law to make that is false or misleading in a material particular; or
“(b) knowingly makes a declaration that the person is required by a law to make that is false or misleading in a material particular; or
“(c) knowingly gives a certificate that the person is required by a law to give that is false or misleading in a material particular.

“(8) A person commits an offence against this Act who personates or falsely represents himself or herself to be—
“(a) an official; or
“(b) any other person authorised to exercise a power or carry out a function or duty under a law.

“(9) A person commits an offence against this Act who buys, sells, exchanges, or otherwise acquires or disposes of, unauthorised goods—
“(a) knowing that they are unauthorised goods; or
“(b) knowing that they may be unauthorised goods and reckless as to whether they are or not.

“(10) A person commits an offence against this Act who, knowing that goods are risk goods that have been seized by, or are otherwise under the control of, an inspector, an authorised person, or an automated electronic system,—
“(a) alters the condition of the goods without the permission of an inspector, an authorised person, or an automated electronic system; or
“(b) alters the condition of the goods with the permission of an inspector, an authorised person, or an automated electronic system but not in the manner required by the permission; or
“(c) unpacks or repacks the goods without the permission of an inspector, an authorised person, or an automated electronic system; or
“(d) unpacks or repacks the goods with the permission of an inspector, an authorised person, or an automated electronic system but not in the manner required by the permission.

“(11) A person commits an offence against this Act in the following circumstances:
“(a) risk goods have been seized by, or are otherwise under the control of, an inspector, an authorised person, or an automated electronic system; and
“(b) the goods are stored in a place where the inspector, authorised person, or automated electronic system has directed that they should be stored; and
“(c) the person knows the facts in paragraphs (a) and (b); and
“(d) the person removes the goods from the place—

“(i) without the permission of an inspector, an authorised person, or an automated electronic system; or

“(ii) with the permission of an inspector, an authorised person, or an automated electronic system but not in the manner required by the permission.

“(12) A person commits an offence against this Act in the following circumstances:

“(a) risk goods have been seized under this Act; and

“(b) the person knows the fact in paragraph (a); and

“(c) the person takes or carries away the goods or otherwise converts them to his or her own use without the permission of an inspector, an authorised person, or an automated electronic system.

“(13) A person commits an offence against this Act in the following circumstances:

“(a) a direction has been given under this Act that the carcass of an organism or risk goods be buried; and

“(b) the direction has been complied with; and

“(c) the person knows the facts in paragraphs (a) and (b); and

“(d) the person exhumes the organism or risk goods without the permission of an inspector, an authorised person, or an automated electronic system.

“(14) A person commits an offence against this Act in the following circumstances:

“(a) a notice about a place is in force under section 130(1); and

“(b) the person knows the fact in paragraph (a); and

“(c) the person—

“(i) removes an organism, organic material, or risk goods from the place; or

“(ii) removes from the place any goods that have, while in the place, been in contact with an organism, organic material, or risk goods; or

“(iii) introduces goods into the place; or

“(iv) removes, alters, or defaces the identification that an inspector, an authorised person, or an automated electronic system has directed be used to identify an organism, risk goods, or other goods in the place; and
“(d) the person does the action described in paragraph (c) without the permission of an inspector, an authorised person, or an automated electronic system.

“Penalty: section 157(2)

“(15) A person commits an offence against this Act who has unauthorised goods in his or her possession or control, knowing that they are unauthorised goods.

“Penalty: section 157(3)

“(16) A person commits an offence against this Act who fails to comply with section 41(5).

“(17) A person commits an offence against this Act who fails to comply with section 51(2).

“(18) A person commits an offence against this Act who knowingly fails to comply with a provision of this Act relating to the holding of levy money in trust accounts.

“Penalty: section 157(5)

“(19) A person commits an offence against this Act who fails to comply with section 37C(2) or (3).

“(20) A person commits an offence against this Act who fails to inform the Ministry, as soon as practicable in the circumstances, of the presence of what appears to be an organism not normally seen or otherwise detected in New Zealand, as required by section 44, if the person knows or could reasonably be expected to know that the organism is not normally seen or otherwise detected in New Zealand.

“(21) A person commits an offence against this Act who—

“(a) is in a biosecurity control area; and

“(b) is asked a question by an inspector or an automated electronic system for the purpose of the inspector or the system ascertaining the presence, nature, origin, or itinerary of risk goods; and

“(c) wilfully gives a false or misleading answer.”

62 Penalties

(1) Section 157(1) is amended by omitting “paragraphs (f), (g), (h), (i), (j), (k), (l), or (m) of section 154” and substituting “section 154N(1) to (15)”.

(2) Section 157(2) is amended by omitting “section 154(f)” and substituting “section 154N(15)”.

(3) Section 157(3) is amended by omitting “paragraphs (a), (b), (c), (n), or (t) of section 154” and substituting “section 154M(6) to (8) or 154N(16) to (18)”.

(4) Section 157(4) is amended by omitting “paragraph (d) or paragraph (e) of section 154” and substituting “section 154M(9) to (12)”.

(5) Section 157(5) is amended by omitting “paragraphs (ma), (o), (p), (q), (r), (u), or (v) of section 154” and substituting “section 154L, 154M(13) to (21), or 154N(19) to (21)”.

(6) Section 157(7) is amended by omitting “Subject to section 159A, every person who commits an offence against paragraph (s) of section 154”
and substituting “Every person who commits an offence against section 154M(22)“.

63 Proceedings for infringement offences

Section 159(1) is repealed and the following subsections are substituted:

“(1) This section applies when an inspector has reason to believe that a person (the defendant) has committed an infringement offence (other than a border infringement offence).

“(1A) Proceedings may be taken against a person under the Summary Proceedings Act 1957.

“(1B) Alternatively, the inspector may issue an infringement notice to the person. In that case,—

“(a) proceedings for the offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and

“(b) the Summary Proceedings Act 1957 applies with the modifications described in this section.”

65 Evidence in proceedings

(1) Section 161(2)(a)(i) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”.

(2) Section 161(2)(a)(ii) is amended by omitting “strategy” and substituting “plan”.

(3) Section 161(2)(d)(ii) is amended by omitting “strategy” and substituting “plan or national pathway management plan”.

(4) Section 161(2)(e)(ii) is amended by omitting “strategy” and substituting “plan or national pathway management plan”.

(5) Section 161(2)(f) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”.

(6) Section 161(2) is amended by adding the following paragraph:

“(j) a certificate purporting to be signed by the Director-General stating that an action was done by an automated electronic system.”

66 New Part 8A inserted
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The following new Part is inserted after section 162:

“Part 8A - Exclusive economic zone

“162AA Definitions for this Part

“(1) In this Part, exclusive economic zone or EEZ means the zone described in section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977 as the exclusive economic zone.

“(2) In this Part, and in provisions modified by this Part, arrive in the EEZ means to anchor in, berth in, or operate in the EEZ for the purpose of exploring or exploiting resources in the EEZ, or in preparation or support for such a purpose, after a voyage originating beyond the outer limits of the EEZ.

“162AB Application of Act in EEZ

“(1) The provisions of this Act apply in the EEZ to the extent to which their language permits and with the modifications made by this Part.

“(2) A modification made by this Part to a provision also applies to—

“(a) regulations for which the modified provision is the parent provision; and

“(b) instruments under this Act that apply generally for which the modified provision is the parent provision.

“(3) A provision in this Act that applies in the EEZ must be interpreted in a way that preserves the rights of other states, including the freedoms of navigation and overflight, as set out in the United Nations Convention on the Law of the Sea of 10 December 1982.

“162AC Application of Act to fish and mammals taken in EEZ

“(1) Fish and marine mammals taken in the EEZ and carried on board a foreign licensed vessel, a vessel registered under the Fisheries Act 1983, or a vessel operated by the Crown are treated for the purposes of this Act as if they were not imported goods.

“(2) In subsection (1),—

“fish” has the meaning given to it by section 2 of the Fisheries Act 1983

“marine mammal” has the meaning given to it by section 2 of the Marine Mammals Protection Act 1978.

“162AD Purpose of Part 3

Section 16 applies as if paragraph (b) read ‘craft that arrive in the EEZ’.

“162AE Notice of intended arrival of craft in EEZ

“(1) Section 17 applies as if ‘New Zealand’ and ‘New Zealand territory’ read ‘the EEZ’.

“(2) Section 17 applies as if ‘approved port’ and ‘port or destination’ read ‘approximate location’.

“(3) Section 17(2), (6)(b)(ii), (7), (9)(c)(ii), and (10) do not apply.

“162AF Arrival of craft in EEZ

“(1) Section 18(1) applies as if ‘craft that arrives at a place in New Zealand’ read ‘craft that arrives in the EEZ’.

“(2) Section 18(1)(a)(ii) applies as if ‘port or destination’ read ‘approximate location’.
“(3) Section 18(3) applies as if ‘or the EEZ’ appeared after ‘New Zealand waters’.

“162AG Persons in charge of certain craft to obey directions of inspector or authorised person

“(1) Section 19 applies as if ‘New Zealand’ read ‘the EEZ’.

“(2) Section 19(2)(a)(ii) applies as if ‘or the disembarkation of crew or passengers from the craft’ did not appear.

“(3) Section 19(2)(c) applies as if ‘cargo, crew, passengers, stores, or’ did not appear.

“162AH Craft risk management standards and plans

A craft risk management standard made under section 22AD may specify requirements for craft that arrive in the EEZ.

“162AI Boarding of craft

Section 31 applies as if paragraph (b) read ‘any craft, used for the transportation of people or goods, or both, by sea, that is within the EEZ for the purposes of exploring or exploiting resources in the EEZ, or in preparation or support for such a purpose, after a voyage originating beyond the outer limits of the EEZ—’.

“162AJ Powers relating to craft

“(1) Section 32(1) applies as if ‘or the EEZ’ appeared after the first reference to ‘New Zealand territory’.

“(2) Section 32(1)(a) applies as if ‘or the EEZ’ appeared after ‘New Zealand territory’.

“(3) Section 32(1)(b) applies as if ‘New Zealand territory’ read ‘the EEZ, but only if there is no feasible alternative to managing the biosecurity risks posed by the craft and if the movement directed is only to the extent reasonably necessary to manage the biosecurity risks posed by the craft’.

“162AK Risk goods on board craft

“(1) Section 33(1) applies as if ‘or attached to the outside of the craft, including the hull,’ appeared after ‘on board a craft’.

“(2) Section 33(1) applies as if ‘or that has arrived in the EEZ’ appeared after the second reference to ‘New Zealand territory’.

“(3) Section 33(1)(a) applies as if ‘or the EEZ’ appeared after ‘New Zealand territory’.

“(4) Section 33(1)(b) applies as if it read ‘move the craft outside New Zealand territory or the EEZ or move the craft into New Zealand territory from the EEZ (immediately, or within a period specified by the inspector), but only if there is no feasible alternative to managing the biosecurity risks posed by the craft and if the movement directed is only to the extent reasonably necessary to manage the biosecurity risks posed by the craft; or’.

“(5) Section 33(2)(a) applies as if ‘or the EEZ’ appeared after ‘New Zealand territory’.
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“(6) Section 33(2)(b) applies as if it read ‘seize, destroy, or deal with the risk goods concerned’.

“(7) Section 33(3) applies as if ‘or attached to the outside of the craft, including the hull,’ appeared after ‘on board a craft’.

“162AL Duty to provide information
Section 43(1)(a) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“162AM General duty to inform
Section 44 applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“162AN Duty to report notifiable organisms
Section 46(1)(a) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“162AO Requirements to proceed with plan
“(1) Section 62(3) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“(2) Section 62 applies as if it did not contain subsection (5).

“162AP Contents of plan
Section 64(5)(c) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’ in both places.

“162AQ Declaration of biosecurity emergency
Section 144(1) applies as if ‘or the EEZ’ appeared after ‘New Zealand’.

“162AR Emergency powers
Section 145(2) applies as if ‘anywhere in New Zealand’ read ‘anywhere in New Zealand or the EEZ’.

“162AS Provisional control action
Section 152(1) applies as if ‘or the EEZ’ appeared after ‘New Zealand’.

“162AT Offences
“(1) Section 154M is modified in that only the following of its offence provisions apply in the EEZ:

“(a) section 154M(1) to (5):

“(b) section 154M(6), so far as it applies to sections 18 and 19:

“(c) section 154M(10) to (12):

“(d) section 154M(13), so far as it applies to section 17:

“(e) section 154M(15):

“(f) section 154M(19).

“(2) Section 154N is modified in that only the following of its offence provisions apply in the EEZ:

“(a) section 154N(1), so far as it relates to sections 46, 52, and 53:

“(b) section 154N(2):

“(c) section 154N(3):

“(d) section 154N(5):

“(e) section 154N(6):

“(f) section 154N(7):

“(g) section 154N(8):

“(h) section 154N(20).

“162AU Regulations
Section 165 is modified in that only the following of its regulation-making powers apply in the EEZ:

“(a) section 165(2):

“(b) section 165(6):
“(c) section 165(8):

“(d) section 165(14) to (17):

“(e) section 165(19):

“(f) section 165(21):

“(g) section 165(23)

“(h) section 165(24).”

67 Section 162A substituted

Section 162A is repealed and the following section substituted:

“162A Compensation

“(1) This section applies when—

“(a) powers under this Act are exercised for the purpose of eradicating or managing an organism; and

“(b) the powers are not exercised to implement a pest management plan or pathway management plan; and

“(c) the exercise of the powers causes loss to a person as a result of—

“(i) damage to or destruction of the person's property; or

“(ii) restrictions imposed under Part 6 or 7 on the movement or disposal of the person's goods; and

“(d) there is no government/industry agreement for readiness or response that applies to the loss and whose provisions on compensation are expressed to take priority over this section.

“(2) The person is entitled to compensation under this section for loss that—

“(a) is verifiable; and

“(b) is loss that the person has been unable to mitigate by taking every step that is reasonable in the circumstances.

“(3) Compensation must not be paid if—

“(a) the person's loss relates to unauthorised goods or uncleared goods; or

“(b) the person suffered the loss before the time at which the exercise of the powers began; or

“(c) the person failed to comply with this Act or regulations—

“(i) in a serious or significant way; or

“(ii) in a way that contributed to the presence of the organism; or

“(iii) in a way that contributed to the spread of the organism.

“(4) The amount of compensation paid must put the person to whom it is paid in no better or worse position than a person whose property or goods are not directly affected by the exercise of the powers.

“(5) The period for making a claim for compensation after the date on which the loss suffered by the person ought reasonably to have been verifiable is—
“(a) within 1 year from the date; or
“(b) after 1 year from the date, if the person was unable to make a claim within 1 year because of circumstances beyond the person’s control.

“(6) If there is a dispute about eligibility for, or the amount of, compensation,—

“(a) the dispute must be submitted to arbitration; and
“(b) the arbitration must be conducted under the Arbitration Act 1996.

“(7) Compensation payable by a Minister or by the Director-General is payable from money appropriated by Parliament for the purpose.”

68 Protection of inspectors and others
Section 163 is amended by omitting “strategy” and substituting “plan or a pathway management plan”.

69 New section 164D inserted
The following section is inserted after section 164C:

“164D Consultation about regulations
“(1) Subsection (2) applies before the responsible Minister makes a recommendation for the purposes of section 165.
“(2) The responsible Minister must consult the persons who the Minister has reason to believe are representative of interests likely to be substantially affected by the regulations, to the extent to which consultation is reasonably practicable having regard to the circumstances of the particular case.”

70 Section 165 substituted
Section 165 is repealed and the following section substituted:

“165 Regulations

“Part 3 matters
“(1) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 16B(6).
“(2) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 17(11).
“(3) The Governor-General may from time to time, by Order in Council, make regulations on any or all of the following matters relating to the giving of notice of goods’ intended arrival in New Zealand:

“(a) requiring that the notice be given to the Director-General:
“(b) specifying the class or description of importer who must give the notice:
“(c) specifying the class or description of goods of which notice must be given:
“(d) requiring that the notice contain any or all of the following information about the goods:

“(i) when and where, approximately, they will arrive in New Zealand:
“(ii) their nature:
“(iii) details of their journey, including their place of origin:

“(iv) the craft they are on:

“(v) the basis on which the importer believes that they are eligible to receive a biosecurity clearance under section 26:

“(e) specifying the length of time before the goods arrive in New Zealand at which the notice must be given:

“(f) requiring importers giving notices—

“(i) to give different information about the matters depending on the class or description of the goods:

“(ii) to give the information at different times depending on the class or description of the goods:

“(g) providing for the Director-General to require the giving of the notice earlier than the times specified in the regulations if—

“(i) an emergency or an urgent situation has arisen; and

“(ii) the emergency or the urgent situation creates a risk of significant economic or environmental loss or harm; and

“(h) specifying the form and manner in which the notice must be given.

“(4) The Governor-General may from time to time, by Order in Council, make regulations on any or all of the following for the purpose of managing risks associated with goods after the goods have received a biosecurity clearance:

“(a) the class or description of goods to which the regulations apply:

“(b) the class or description of persons to whom the regulations apply:

“(c) the places or areas in New Zealand in which the regulations apply:

“(d) on the use of the goods,—

“(i) the use to which they must be put; or

“(ii) the restrictions or conditions on their use:

“(e) requirements when ownership or possession of the goods is transferred:

“(f) requirements to label the goods:

“(g) requirements to report on or monitor the goods:
“(h) requirements to keep records:

“(i) requirements to notify the Director-General of matters:

“(j) the duration of requirements in the regulations:

“(k) a system for auditing and verifying compliance with the requirements in the regulations:

“(l) any other matters reasonably necessary for the effective implementation of the requirements in the regulations.

“Part 5 matters

“(5) The Governor-General may from time to time, by Order in Council, make regulations setting out the process for assigning responsibility under section 55, which must cover at least the following:

“(a) what criteria the Minister must apply in assigning responsibility:

“(b) what kind of consultation the Minister must undertake:

“(c) how the Minister must communicate the Minister's decision to the decision-maker and the public.

“(6) The Governor-General may from time to time, by Order in Council, make regulations about proposals for pest management plans or pathway management plans, prescribing procedures on—

“(a) preparation:

“(b) notification:

“(c) consultation:

“(d) submissions:

“(e) hearings:

“(f) the protection of sensitive information.

“(7) The Governor-General may from time to time, by Order in Council, make regulations—

“(a) prescribing procedures to be followed and standards to be met by management agencies and persons acting on behalf of management agencies in implementing pest management plans or pathway management plans:

“(b) requiring reporting on the achievement of objectives in pest management plans or pathway management plans and on other aspects of performance relating to pest management plans or pathway management plans.

“(8) The Governor-General may from time to time, by Order in Council, make regulations—

“(a) prescribing standards of technical competence, experience, and qualifications relating to—

“Part 6 matters

“(9) The Governor-General may from time to time, by Order in Council, make regulations—

“(b) requiring reporting on the achievement of objectives in pest management plans or pathway management plans and on other aspects of performance relating to pest management plans or pathway management plans.

“(a) prescribing standards of technical competence, experience, and qualifications relating to—
“(i) the appointment of inspectors and authorised persons:

“(ii) the accreditation and appointment of accredited persons:

“(b) prescribing procedures relating to—

“(i) the appointment of inspectors and authorised persons:

“(ii) the accreditation and appointment of accredited persons.

“(10) The Governor-General may from time to time, by Order in Council, make regulations prescribing procedures to be followed and standards to be met by—

“(a) inspectors:

“(b) authorised persons:

“(c) persons involved in the handling of diseased or pestiferous organic material:

“(d) other persons involved in the exercise of a power or the carrying out of a function or duty under this Act.

“(11) The Governor-General may from time to time, by Order in Council, make regulations specifying audits for the purposes of section 105C(3).

“(12) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 121A prescribing articles or substances that may be left on any place for the purpose of ascertaining the presence or absence of a pest or unwanted organism.

“(13) The Governor-General may from time to time, by Order in Council, make regulations prescribing the following matters relating to costs:

“(a) the matters for which they are recoverable under—

“(i) this Act:

“(ii) regulations:

“(iii) pest management plans:

“(iv) pathway management plans:

“(b) their amounts:

“(c) the method by which they are to be assessed:

“(d) the persons liable for their payment:

“(e) the circumstances in which their recovery may be wholly or partly waived or remitted.

“Part 8 matters

“(14) The Governor-General may from time to time, by Order in Council, make regulations prescribing methods of implementing and enforcing standards prescribed under this Act.

“(15) The Governor-General may from time to time, by Order in Council, make regulations on the following matters relating to offences:

“(a) prescribing offences committed by contravening a regulation made under this Act:
“(b) prescribing offences committed by contravening a lawful direction or requirement under a regulation made under this Act:

“(c) prescribing the offences against or under this Act that are infringement offences:

“(d) prescribing the form of an infringement notice for an infringement offence:

“(e) prescribing any additional particulars required in an infringement notice for an infringement offence:

“(f) prescribing an infringement fee no greater than $1,000 payable for each infringement offence:

“(g) specifying that an infringement offence is a border infringement offence if it is committed—

“(i) in a biosecurity control area at a port approved under section 37; or

“(ii) at a port approved under section 37A:

“(h) prescribing the form of an infringement notice for a border infringement offence:

“(i) prescribing any additional particulars required in an infringement notice for a border infringement offence.

“Risk goods, waste, organic material, and pest-ridden places

“(16) The Governor-General may from time to time, by Order in Council, make regulations regulating or controlling the holding, disposal, and treatment of risk goods.

“(17) The Governor-General may from time to time, by Order in Council, make regulations about garbage and other waste organic material,—

“(a) prohibiting or controlling its disposal:

“(b) providing for controls to prevent access to it by animals.

“(18) The Governor-General may from time to time, by Order in Council, make regulations about organic material,—

“(a) requiring its identification:

“(b) prohibiting, regulating, or controlling its use:

“(c) prohibiting or regulating organic material as food for organisms.

“(19) The Governor-General may from time to time, by Order in Council, make regulations about places that are particularly liable to harbour pests or unwanted organisms, or are difficult to monitor, or may serve as an active source of pests or unwanted organisms,—

“(a) providing for their registration:

“(b) prescribing technical standards for their construction, equipping, maintenance, and operation:

“(c) prescribing standards for their operators.
“Standards, permits, registrations, approvals, and exemptions

“(20) The Governor-General may from time to time, by Order in Council, make regulations prescribing standards for places that are required to be designated, registered, or approved—

“(a) under this Act; or
“(b) under regulations.

“(21) The Governor-General may from time to time, by Order in Council, make regulations about permits, registrations, approvals, and exemptions under this Act,—

“(a) prescribing the manner and content of applications for them:
“(b) prescribing procedures for the assessment, consideration, approval, and refusal of applications for them:
“(c) prescribing conditions that must or may be attached to them:
“(d) regulating their issue, transfer, amendment, suspension, revocation, cancellation, or withdrawal:
“(e) requiring their holders to—
“(i) keep records; and
“(ii) provide copies of the records to the Director-General or any other chief executive, whenever the holders are asked and wherever the records are held; and
“(iii) provide copies of any other information to the Director-General or any other chief executive, whenever the holders are asked and wherever the information is held.

“Record-keeping

“(22) The Governor-General may from time to time, by Order in Council, make regulations requiring persons engaged in prescribed activities to—

“(a) keep records; and
“(b) provide copies of the records to the Director-General or any other chief executive, whenever the holders are asked and wherever the records are held; and
“(c) provide copies of any other information to the Director-General or any other chief executive, whenever the holders are asked and wherever the information is held.

“Manner in which information to be provided

“(23) The Governor-General may from time to time, by Order in Council, make regulations specifying the manner in which information that must be provided to the Ministry is to be provided.

“Contemplated or necessary matters

“(24) The Governor-General may from time to time, by Order in Council, make regulations providing for matters that are contemplated by this Act or
71 General provisions as to regulations
Section 166(2) is repealed.

72 Schedule 2 repealed
Schedule 2 is repealed.

73 Transitional provision on pest management
(1) A national pest management strategy in force on the day on which this section commences is deemed to be a national pest management plan.

(2) A regional pest management strategy in force on the day on which this section commences is deemed to be a regional pest management plan.

(3) A reference to a strategy rule in a national pest management strategy or regional pest management strategy to which subsection (1) or (2) applies is deemed to be a reference to a rule.

(4) A reference in a document existing on the day on which this section commences to a pest management strategy is deemed to be a reference to a pest management plan.

(5) The references in clause 10(i) and (iii) in Schedule 2 of the Waitutu Block Settlement Act 1997 to a pest management strategy are deemed to be references to a pest management plan.

(6) Consultation on a proposed national policy direction undertaken before the commencement of this section that is substantially the same as the consultation required by section 57 of the principal Act, as substituted by section 37 of this Act, fulfils the requirement for consultation in section 57 of the principal Act, as substituted by section 37 of this Act.

(7) The following provisions apply to the review of a national pest management strategy, or a regional pest management strategy, in force on the day on which this section commences:

(a) the strategy is to be reviewed by the date for the next review required by section 88 of the principal Act as it was before being repealed by section 37 of this Act:

(b) the review must follow the process in section 100 of the principal Act as substituted by section 37 of this Act:

(c) if the national policy direction has been made before the review starts, the review must include—

(i) determining whether the strategy is inconsistent with the national policy direction; and

(ii) if it is, making amendments to it to ensure that it does not remain inconsistent with the direction.

(8) A national pest management plan or regional pest management plan that has been reviewed as described in subsection (7) is deemed to be not inconsistent with the national policy direction, but a court may declare that it is inconsistent.
Section 68(5) of the principal Act, as substituted by section 37 of this Act, has no effect until—

(a) the national policy direction has been made; and

(b) the regional pest management plan has been reviewed as described in subsection (7) of this section; and

(c) either—

(i) the time in section 74(3) of the principal Act, as substituted by section 37 of this Act, has ended with no application to the Environment Court having been made; or

(ii) an application under section 74 of the principal Act, as substituted by section 37 of this Act, has been made and determined and either all appeals have been determined or the time for appealing has ended.

During the period in which section 68(5) of the principal Act as substituted by section 37 of this Act has no effect, as described in subsection (9), section 87(2) of the principal Act as it was before it was repealed by section 37 of this Act continues to apply.

A small-scale management programme declared under section 100 of the principal Act in force on the day on which this section commences is deemed to have been made under section 100Q as substituted by section 37 of this Act.

On the day on which this section commences, the following provisions apply:

(a) if a proposal has been notified under section 62 and the Minister has not yet acted under section 68, Part 5 applies (meaning section 62, section 68, and Part 5 as they were on the day immediately before the day on which this section commences);

(b) if a proposal has been notified under section 78 and the council has not yet acted under section 79F, Part 5 applies (meaning section 78, section 79F, and Part 5 as they were on the day immediately before the day on which this section commences).

Transitional provision on import health standards on ballast water or biofouling

The import health standard entitled “Importing Ballast Water from all Countries”, and any import health standard issued under the principal Act that relates to biofouling, is valid until replaced by an appropriate craft risk management standard made under sections 22AD and 162AH.

The import health standards referred to in subsection (1) apply to craft that arrive in the EEZ until replaced by an appropriate craft risk management standard made under sections 22AD and 162AH.
75 Transitional provision on compensation

Section 162A(5) of the principal Act, as substituted by section 69 of this Act, applies to loss suffered after the commencement of this section.

Biosecurity Law Reform
Bill

Part 2 - Amendments relating to ballast water

76 Amendments to Maritime Transport Act 1994

(1) This section amends the Maritime Transport Act 1994.

(2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“ballast water means water with its suspended matter taken on board a ship to control the ship’s trim, list, draught, stability, or stresses”.

(3) The following cross heading and sections are inserted after section 197:

“Ballast water management levy

“197A Regulations may impose levy

“(1) The Governor-General may from time to time, by Order in Council, make regulations imposing a ballast water management levy on ships that discharge ballast water from outside New Zealand waters into New Zealand waters or the exclusive economic zone.

“(2) The purpose of the levy is to wholly or partly fund administration, inspection, and enforcement services relating to the control and management of ballast water.

“(3) Sections 197C and 197D apply if regulations are made under this section.

“197B Content of regulations

“(1) Regulations made under section 197A must not impose the levy on pleasure craft.

“(2) The regulations may—

“(a) specify the persons required to pay the levy, including, without limitation, all or any of—

“(i) the master, owner, charterer, and person responsible for the management of the ship; and

“(ii) an agent of a person referred to in subparagraph (i) who is liable to pay any other charge for the ship:

“(b) prescribe the same rate of levy for all ships or different rates of levy for different classes of ship based on length, tonnage, equipment available for use on board the ship, or any other criteria specified in the regulations:

“(c) provide for all or part of the levy to be waived or refunded in a specified case or class of cases:
“(d) provide that, at the option of the Director or the person liable to pay the levy,—

“(i) the levy is payable on an annual basis or any other equal basis, in advance or after the event, and in a lump sum or on a per voyage basis; and

“(ii) the options may be changed and consequential adjustments made:

“(e) exempt a ship or a ship used for a purpose specified in the regulations or a class or description of ship from having to pay all or part of the levy, without conditions or subject to conditions specified in the regulations:

“(f) specify circumstances in which a ship or a ship used for a purpose specified in the regulations or a class or description of ship is exempt from having to pay all or part of the levy.

“197C Collection of levy

“(1) The Director may collect the levy.

“(2) The Director may appoint all or any of the following as the Director’s agent to collect the levy:

“(a) the chief executive of the New Zealand Customs Service:

“(b) the holder of an office in the public service:

“(c) the holder of an office outside the public service:

“(d) any other person.

“(3) An appointment under subsection (2)(c) or (d) may provide for 1 or both of the following:

“(a) the payment of a fee by the Director for the collection of the levy:

“(b) the retention by the agent of a specified proportion of the levy as a collection fee.

“(4) Subsection (5) applies if—

“(a) the regulations specify that a person required to pay the levy is an agent described in section 197B(2)(a)(ii); and

“(b) the agent pays the levy; and

“(c) the agent holds money received on account of the ship or belonging to the ship’s owner.

“(5) The agent may retain from the money the amount of levy paid and reasonable expenses incurred in paying it.

“(6) Every person who receives a payment of the levy must issue to the person making the payment a receipt showing clearly the ship and the period for which the payment is made.

“197D Distraint and detention

“(1) If the levy is not paid on a demand from the Director or the chief executive of the New Zealand Customs Service, the Director or the chief executive may, in addition to any other remedy, go on board the ship and distrain the cargo and any other property belonging to or on board the ship until the levy is paid.
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“(2) If the levy is not paid on a demand from a person entitled to demand it and a receipt showing payment is not produced, the Director or the chief executive of the New Zealand Customs Service may detain the ship until the earliest of the following:

“(a) the levy is paid;
“(b) the receipt is produced;
“(c) 28 days elapse.

“(3) If subsection (2)(c) applies, the Director may—

“(a) sell the ship while the levy continues unpaid or the receipt unproduced; and
“(b) apply the proceeds in payment of the levy and reasonable expenses incurred by the Director under subsection (2) and this section; and
“(c) pay the surplus (if any), on demand, to the master, owner, or other person responsible for the management of the ship.

“(4) None of the Director, the chief executive of the New Zealand Customs Service, and a person acting under the direction or authority of the Director or chief executive is liable for any loss or damage arising directly or indirectly from the detention or sale of a ship under this section, unless it is proved to the satisfaction of a court that the Director, chief executive, or person acted in bad faith.

“(5) The chief executive of the New Zealand Customs Service must advise the Director of every ship that the chief executive or a person acting under the chief executive’s direction or authority detains under this section.”

(4) The following cross heading and sections are inserted after section 246:

“Ballast water

“246A Conditions on discharge

“(1) The Director may exercise the powers in section 397 for the purpose of implementing articles 9 and 10 of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004.

“(2) The Director may exercise the powers with any necessary modifications.

“246B Offence of discharging ballast water

“(1) This section applies if ballast water is discharged from a ship in breach of—

“(a) marine protection rules; or
“(b) conditions imposed under section 246A.

“(2) The master or owner of the ship commits an offence.

“(3) A person who is not the master or owner of the ship and who causes intentional damage resulting in the discharge of the ballast water commits an offence.

“(4) A person who commits an offence under this section is liable to—

“(a) imprisonment for a term not exceeding 2 years; or
“(b) a fine or fines as follows:

“(i) a fine not exceeding $200,000; and
“(ii) if the offence is a continuing one, a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.”

(5) Section 388 is amended by adding the following paragraph:

“(n) prescribing requirements and procedures relating to the control and management of ballast water.”

(6) Section 396(3) is amended by inserting the following paragraph after paragraph (a):

“(aa) require that person to allow the Director to take a sample of the ship's ballast water:”.

77 Amendments to Maritime Transport
(Marine Protection Conventions) Order 1999

Clause 3 of the Maritime Transport (Marine Protection Conventions) Order 1999 is amended by inserting the following paragraph after paragraph (d):

“(da) International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004:”.

78 Amendments to Resource Management
(Marine Pollution) Regulations 1998

Clause 14(2) of the Resource Management (Marine Pollution) Regulations 1998 is amended by adding “or in contravention of section 246A of the Maritime Transport Act 1994 or rules made under that Act”.
Hazardous substances and New Organisms Act
1996 (Reprinted as at 20 April, 2010)

(Note: the Hazardous Substances and New Organisms Act applies both to introduced organisms and to hazardous substances such as medical, agricultural and industrial chemicals. The following is not a complete copy of the Act; it includes only those sections of the Act that apply to new organisms.)

Part 1 - Preliminary

Section 2 Interpretation

Effect includes -

(a) any potential or probable effect; and
(b) any positive or adverse effect; and
(c) any temporary or permanent effect; and
(d) any past, present, or future effects; and
(e) any acute or chronic effect; and
(f) any cumulative effect which arises over time or in combination with other effects

enforcement officer means an enforcement officer appointed under section 98 or section 99(3)

environment includes—

(a) ecosystems and their constituent parts, including people and communities; and
(b) all natural and physical resources; and
(c) amenity values; and

“incidentally imported new organism means a new organism that is imported in or on goods, but is not—

(a) an essential or constituent part of those goods:
(b) imported in or on the goods with the intention of concealing the presence of the new organism:
(c) a genetically modified organism”

Intrinsic values, in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including—

(a) their biological and genetic diversity; and
(b) the essential characteristics that determine an ecosystem’s integrity, form, functioning, and resilience
“organism”—
(a) does not include a human being:
(ab) includes a human cell:
(b) includes a micro-organism:
(c) includes a genetic structure, other than a human cell, that is capable of replicating itself, whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of an entity:
(d) includes an entity (other than a human being) declared to be an organism for the purposes of the Biosecurity Act 1993:
(e) includes a reproductive cell or developmental stage of an organism”

“pest” means an organism specified as a pest in a pest management strategy”

“restricted organism” means any organism for which a containment approval has been granted in accordance with the Hazardous Substances and New Organisms Act 1996 (including any approval deemed to have been granted under sections 254(1), 254(3), 254(8)(a), 255(1), 255(2), 256, 258(1), and 258(3))”

“risk species” means any species, subspecies, infraspecies, variety, strain, or cultivar prescribed as a risk species under section 140”, i.e. by the Governor-General, by Order in Council.

2A Meaning of term new organism

(1) A new organism is—
(a) an organism belonging to a species that was not present in New Zealand immediately before 29 July 1998:
(b) an organism belonging to a species, subspecies, infraspecies, variety, strain, or cultivar prescribed as a risk species, where that organism was not present in New Zealand at the time of promulgation of the relevant regulation:
(c) an organism for which a containment approval has been given under this Act:
(ca) an organism for which a conditional release approval has been given:
(cb) a qualifying organism approved for release with controls:
(d) a genetically modified organism:
(e) an organism that belongs to a species, subspecies, infraspecies, variety, strain, or cultivar that has been eradicated from New Zealand.

(2) An organism is not a new organism if—
(a) the organism is not a genetically modified organism and—
(i) an approval is granted under section 35 or 38 to release an organism of the same taxonomic classification; or
(ii) the organism is a qualifying organism and an approval has been granted
under section 38I to release an organism of the same taxonomic classification without controls; or

(iii) an organism of the same taxonomic classification has been prescribed as not a new organism; or

(b) the organism is a genetically modified organism and—

(i) an approval is granted under section 38 to release an organism of the same taxonomic classification with the same genetic modification; or

(ii) the organism is a qualifying organism and an approval has been granted under section 38I to release an organism of the same taxonomic classification with the same genetic modification without controls; or

(iii) an organism of the same taxonomic classification with the same genetic modification has been prescribed as not a new organism; or

(c) the new organism was deemed to be a new organism under section 255 and other organisms of the same taxonomic classification were lawfully present in New Zealand before the commencement of that section and in a place that was not registered as a circus or zoo under the Zoological Gardens Regulations 1977.

(2A) A new organism does not cease to be a new organism because—

(a) it is subject to a conditional release approval; or

(b) it is a qualifying organism approved for release with controls; or

(c) it is an incidentally imported new organism.

(3) Despite the provisions of this section, an organism present in New Zealand before 29 July 1998 in contravention of the Animals Act 1967 or the Plants Act 1970 is a new organism.

Part 2 - Purpose of Act

4 Purpose of Act

The purpose of this Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.

5 Principles relevant to purpose of Act

All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, recognise and provide for the following principles:

(a) the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems:
(b) the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations.

6 Matters relevant to purpose of Act

All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, take into account the following matters:

(a) the sustainability of all native and valued introduced flora and fauna:

(b) the intrinsic value of ecosystems:

(c) public health:

(d) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga:

(e) the economic and related benefits and costs of using a particular hazardous substance or new organism:

(f) New Zealand’s international obligations.

7 Precautionary approach

All persons exercising functions, powers, and duties under this Act, including but not limited to, functions, powers, and duties under sections 28A, 29, 32, 38, 45, and 48, shall take into account the need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects. (Note: ss 28A, 29 and 32 apply to hazardous substances; s. 38 applies to the importation or release of organisms, s. 45 provides criteria for determining an application for introduction of a new organism, and s.48 applies to decision-making in the case of an emergency.)

8 Treaty of Waitangi

All persons exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi. (Note: the Treaty of Waitangi is a founding document about the rights of New Zealand’s founding groups of Maori and European settlers.)

9 Methodology to be used

(1) The Governor-General may from time to time, by Order in Council, establish a methodology (which includes an assessment of monetary and non-monetary costs and benefits) for making decisions under Part 5; and the Authority shall consistently apply that methodology when making such decisions.

(2) Before making any recommendation for the purpose of making any Order in Council under subsection (1), the Minister shall request the Authority to—

(a) develop a proposed methodology; and

(b) establish a process that the Minister considers gives the public...
adequate time and opportunity to make submissions on the proposed methodology to the Authority; and

(c) advise the Minister of any submissions received, and any comments the Authority wishes to make on the submissions, or the proposed methodology, and the Minister shall have regard to those submissions and comments.

(3) A failure to comply with subsection (2) shall not affect the validity of any Order in Council made under subsection (1).

(4) Notwithstanding section 59, the Authority shall not proceed to determine any application made under Part 5 until an Order in Council has been made under subsection (1).

(5) No decision of the Authority under Part 5 shall be challenged on the adequacy or otherwise of the methodology developed and applied under subsection (1).

Part 3 - Powers, functions, and duties

10 Powers, functions, and duties of Minister

(1) The Minister may—

“(c) decide any application made under this Act in accordance with the provisions of sections 68 to 73 inclusive of this Act:

(d) carry out any powers, functions, and duties conferred on the Minister by or under this Act.”

11 Powers, functions, and duties of Authority

(1) The Authority may—

(a) advise the Minister on any matter relating to the purpose of this Act, including, but not limited to,—

(i) the extent to which persons are complying with the provisions of this Act:

(ii) inconsistencies or conflicts between any controls placed on hazardous substances and new organisms under this Act and any controls placed on any hazardous substance and new organisms under any other Act:

(iii) the consideration and investigation of the use of environmental user charges in accordance with

(b) monitor and review—

(i) the extent to which the Act reduces adverse effects on the environment or people from hazardous
substances or new organisms:

(ii) the enforcement of this Act including, but not limited to, the exercise of any power under section 103 by any enforcement officer:

(c) promote awareness of the adverse effects of hazardous substances and new organisms on people or the environment and awareness of the prevention or safe management of those effects:

(d) contribute to and co-operate with international forums and carry out international requirements as directed by the Minister:

(e) enquire into any incident or emergency involving a hazardous substance or a new organism:

(f) keep such registers relating to hazardous substances and new organisms as may be required by this Act or as may be necessary to administer this Act:

(fa) approve forms for applications under Part 5:

(fb) give directions as to the disposal of persistent organic pollutants:

(fc) approve standards for containment facilities:

(g) carry out any powers, functions, and duties conferred on it by or under this Act or any other enactment.

(2) The Authority must, before exercising the function specified in subsection (1)(fc), consult the persons whom the Authority considers are representative of the classes of person who are likely to have an interest in the standards.

12 Powers, functions, and duties of enforcement officers

Any enforcement officer may, in relation to the powers, functions, and duties specified in the enforcement officer’s warrant of appointment,—

(a) give advice and information on the provisions of this Act:

(b) promote and monitor compliance with the provisions of this Act:

(c) provide information to the Authority if requested to do so by the Authority:

(d) carry out any powers, functions, and duties conferred on enforcement officers by or under this Act.

13 General duty

(1) Every person who imports, possesses, or uses a hazardous substance or new organism shall ensure that—

(a) any adverse effect caused by an act or omission of that person in relation to that substance or organism on any other person or the environment is avoided, remedied, or mitigated; and
(b) no action or omission by that person will contravene any requirement or control on that substance or organism imposed by this Act.

(2) The duty imposed in accordance with subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.

Part 5 - Assessment of hazardous substances and new organisms

Prohibition of import, etc, and types of approval

25 Restriction of import, manufacture, development, field testing, or release

(1) No—

(a) hazardous substance shall be imported, or manufactured:

(b) new organism shall be imported, developed, field tested, or released otherwise than in accordance with an approval issued under this Act or in accordance with Parts 11 to 16.

(1A) Subsection (1)(b) does not apply to—

(a) the importation of an incidentally imported new organism, if it is imported in or on goods lawfully imported under the Biosecurity Act 1993; or

(b) the movement or use of those goods, together with any new organisms incidentally imported while they remain in or on those goods, after their importation.

(1B) The department responsible for administering the Biosecurity Act 1993 or its agents, and any other departments recognised by the responsible Minister under section 101(2) of that Act or their agents may, despite subsection (1)(b), isolate, aggregate, multiply, or use an incidentally imported new organism for the purpose of identifying, managing, or eradicating that organism.

(2) No approval shall be issued to import, develop, field test, or release any new organism specified in Schedule 2 (Unwanted organisms).

(3) If an organism has a conditional release approval, no further approvals are required for the conditional release of the organism on the same conditions.

(4) If an organism has an approval for importation into containment, no further approvals are required for the importation into containment of the organism.

(5) The restriction on the importation of a new organism does not apply to biological material of the organism that cannot, without human intervention, be used to reproduce the organism.
(6) No person may do any of the things specified in subsection (1)(a) or (b) in relation to any hazardous substance or new organism that is the subject of an innovative agricultural compound application or an innovative medicine application unless the person has applied for and been granted an approval to do that thing.

(7) Subsection (6) ceases to apply in respect of a hazardous substance or new organism on the date that section 55(3) to (4B) ceases to apply either to the Authority or to any information held by the Authority in relation to the hazardous substance or new organism concerned (see section 55 below).

55 Information held on behalf of applicant

(1) Where any person—

(a) supplies any information to the Authority; and

(b) the information is likely to relate to an application for approval; and

(c) the relevant application has not yet been lodged with the Authority,—

the information shall be held by the Authority on behalf of that person; and the provisions of the Official Information Act 1982 shall not apply to that information until the relevant application has been received by the Authority.

(2) Where any information supplied under subsection (1) is held by the Authority on behalf of any person, that information shall be returned upon request.

(3) Where—

(a) any information is held by the Authority relating to any application made under this Act in respect of a hazardous substance or new organism; and

(b) the substance or organism that is the subject of the application is also the subject of an innovative medicine application as defined in section 23A of the Medicines Act 1981; and

(c) that information includes trade secrets or information that has commercial value that would be, or would be likely to be, diminished by disclosure,—

the provisions of sections 23A to 23C of the Medicines Act 1981, with the necessary modifications, shall apply to that information as if the information were confidential supporting information as defined in section 23A of that Act.

(4) The provisions of sections 23A to 23C of the Medicines Act 1981, with the necessary modifications, shall also apply to the Authority in respect of the information referred to in subsection (3) as if the Authority were the Minister of Health, and as if references in those sections to applications were references to applications.
in respect of hazardous substances or new organisms; but—

(a) the protected period (as defined in section 23A of the Medicines Act 1981) shall be the same period for which the information is protected under the Medicines Act 1981; and

(b) the Authority may disclose the information to any prescribed person or organisation or prescribed class of persons or organisations; and

(c) the Authority shall provide a summary of the effects of any substance or organism in respect of which subsection (3) of this section applies where an application for approval is required to be publicly notified in accordance with section 53.

(4A) Where—

(a) any information is held by the Authority relating to any application made under this Act in respect of a hazardous substance or new organism; and

(b) the substance or organism that is the subject of the application is also the subject of an innovative agricultural compound application as defined in Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997; and

(c) that information includes trade secrets or information that has commercial value that would be, or would be likely to be, diminished by disclosure, the provisions of Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997, with the necessary modifications, apply to that information as if the information were confidential supporting information as defined in that Part of that Act.

(4B) The provisions of Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997, with the necessary modifications, apply to the Authority in respect of the information referred to in subsection (4A) as if the Authority were the Director-General, and as if references in those sections to applications were references to applications in respect of hazardous substances or new organisms; but—

(a) the protected period (as defined in Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997) is the same period for which the information is protected under the Agricultural Compounds and Veterinary Medicines Act 1997; and

(b) the Authority may disclose the information to any prescribed person or organisation or prescribed class of persons or organisations; and

(c) the Authority must provide a summary of the effects of any substance or organism in respect of which subsection (4A) applies where an application for approval is required to be publicly notified in accordance with section 53.
27 Types of approval

In this Act, the term approval means any of the following:

(a) an approval to import or manufacture a hazardous substance for release:

(b) an approval to import for release or release from containment any new organism:

(ba) a conditional release approval to import for release or release from containment a new organism:

(bb) an approval to import for release or to release from containment a qualifying organism:

(c) an approval to import any new organism into containment, field test any new organism in containment, develop any new organism in containment:

(d) an approval to import any hazardous substance into containment or manufacture any hazardous substance in containment:

(e) an approval to import or manufacture any hazardous substance for release in an emergency, import any new organism for release in an emergency, or release any new organism from containment in an emergency:

(f) an approval to import an agricultural compound or medicine from containment in a special emergency, or use an agricultural compound or a medicine in a special emergency.

27A Approvals at any taxonomic classification

(1) An approval referred to in section 27(b), (ba), (bb), or (c) may be granted for a new organism at any taxonomic classification that the Authority thinks fit.

(2) An approval that is granted for a new organism (that is not a genetically modified organism) in a taxonomic classification applies to all the organisms in the taxonomic classification.

(3) An approval that is granted for a genetically modified organism in a taxonomic classification applies only to organisms in the taxonomic classification with the same genetic modification as specified in the approval.

(4) Despite subsections (2) and (3), an approval may exclude any organism or groups of organisms from its scope.

Assessment of new organisms for importation or release

34 Application for approval to import or release

(1) Every person intending—

(a) to import for release; or

(b) to release from containment—
any new organism shall, before importation or release, apply, under this section or under section 38A, to the Authority for approval to import or release.

(2) Every application under this section shall be in an approved form and shall include—
   (a) any information prescribed; and
   (b) information on all occasions where the organism has been considered by the government of any prescribed State or country or by any prescribed organisation and the results of such consideration; and
   (c) the identification of the organism; and
   (d) any likely inseparable organisms; and
   (e) all the possible adverse effects of the organism on the environment; and
   (f) the affinities of the organism with other organisms in New Zealand; and
   (g) the potential use for the organism.

(3) The Authority may, by written notice given to the applicant, require the applicant to verify an application by statutory declaration.

(4) Any applicant may, by written notice to the Authority, withdraw the application at any time.

34A Applications for conditional release and for release in respect of same new organism

(1) The user of a conditional release approval may, at or after the time of applying for the approval, apply to the Authority for approval to release the new organism at the expiry of the conditional release approval.

(2) The application must be treated as if it were an application under section 34 to release the new organism from containment.

(3) If the application is granted, the approval takes effect immediately after the expiry of the conditional release approval.

35 Rapid assessment of risk for importation of new organisms

(1) Where the Authority receives an application under section 34 to import a new organism that is not a genetically modified organism for release, the Authority may make a rapid assessment of the adverse effects of importing that organism in accordance with subsections (2) and (3).

(2) If the Authority is satisfied that—
   (a) the organism is not an unwanted organism as defined in the Biosecurity Act 1993; and
   (b) it is highly improbable that the organism, after release,—
(i) could form self-sustaining populations anywhere in New Zealand, taking into account the ease of eradication; or
(ii) could displace or reduce a valued species; or
(iii) could cause deterioration of natural habitats; or
(iv) will be disease-causing or be a parasite, or be a vector or reservoir for human, plant, or animal disease; or
(v) will have any adverse effects on human health and safety or the environment,—
the Authority may approve the application without controls.

(3) If the Authority is satisfied that—
(a) the organism is an unwanted organism as defined in the Biosecurity Act 1993; or
(b) the organism is likely to fail the minimum standards specified in section 36—
the Authority may, subject to subsection (5), decline the application.

(4) If the Authority considers that the application should not be approved under subsection (2), then the application may be determined under section 38.

(5) Where any person appointed by the Authority to conduct a rapid assessment of risk declines an application under subsection (3), the applicant may request the Authority to continue the assessment and determine the application in accordance with section 38.

36 Minimum standards
The Authority shall decline the application, if the new organism is likely to—
(a) cause any significant displacement of any native species within its natural habitat; or
(b) cause any significant deterioration of natural habitats; or
(c) cause any significant adverse effects on human health and safety; or
(d) cause any significant adverse effect to New Zealand’s inherent genetic diversity; or
(e) cause disease, be parasitic, or become a vector for human, animal, or plant disease, unless the purpose of that importation or release is to import or release an organism to cause disease, be a parasite, or a vector for disease.

37 Additional matters to be considered
The Authority, when making a decision under section 38, shall have regard to—
(a) the ability of the organism to establish an undesirable self-sustaining population; and
(b) the ease with which the organism could be eradicated if it established an undesirable self-sustaining population.
38 Determination of applications to import or release

(1) If an application made under section 34 is not granted under section 35 or any other section, the Authority may, in its discretion,—

(a) approve the application if—

(i) the organism meets the minimum standards set out in section 36; and

(ii) after taking into account all the effects of the organism, the effects of any inseparable organism and the matters in section 37, the positive effects of the organism outweigh the adverse effects of the organism and any inseparable organism; or

(b) decline the application if—

(i) the organism fails to meet the said minimum standards; or

(ii) after taking into account all the effects of the organism, the effects of any inseparable organism, and the matters in section 37, the adverse effects of the organism and any inseparable organism outweigh the positive effects; or

(iii) insufficient information is available to enable the Authority to assess the adverse effects of the organism.

(2) An approval under subsection (1) must be granted without controls.

(3) Any approval to import an organism for release or to release an organism from containment shall lapse 5 years after the date of the approval unless—

(a) the organism is sooner released; or

(b) the Authority, following an application by any person before the expiry of the time limit, extends the time limit for a further period of up to 5 years.

(3A) However, subsection (3) does not apply to an approval under this section that takes effect on the expiry of a conditional release approval.

(4) Every person who releases an organism in accordance with an approval given under this section within 5 years after the date of that approval shall, unless the requirement is waived by the Authority, notify the Authority within 1 month after the date of release.

(5) The Authority shall give its decision in writing, including reasons for the decision, give written notice of the decision to the applicant and every person who made a submission, and publicly notify it.

Conditional release of new organisms
38A Application for approval to import or release new organism with controls

(1) A person may apply to the Authority for a conditional release approval to import for release or to release from containment a new organism with controls.

(2) An application for a conditional release approval must be in the approved form and must include—

(a) all prescribed information (if any); and

(b) information on all occasions where the organism has been considered by the government of any prescribed State or country or by any prescribed organisation and the results of the consideration; and

(c) the identification of the organism; and

(d) any likely inseparable organisms; and

(e) all the possible adverse effects of the organism on the environment; and

(f) the affinities of the organism with other organisms in New Zealand; and

(g) the proposed use for the organism; and

(h) the controls that the applicant proposes the organism would be subject to on its release.

(3) The Authority may, by written notice given to the applicant, require the applicant to verify an application by statutory declaration.

(4) Any applicant may, by written notice to the Authority, withdraw the application at any time.

38B Application under section 34 may be treated as application under section 38A

The Authority may, with the agreement of the applicant, treat an application made under section 34 as if it were an application made under section 38A, and sections 38A, 38BA, 38C, and 53(1)(ab) apply accordingly.

38BA Rapid assessment of risk for importation or release of new organisms with controls

(1) If the Authority receives an application under section 38A in respect of a new organism (other than a genetically modified organism), the Authority may make a rapid assessment of the adverse effects of importing the organism for release or releasing the organism from containment.

(2) The Authority may approve the application and grant a conditional release approval with controls if the Authority is satisfied that—

(a) the organism is not an unwanted organism as defined in the Biosecurity Act 1993; and

(b) after the controls are imposed, the organism will comply with section 35(2)(b).
38C Determination of applications to import or release new organisms with controls

(1) If an application made under section 38A is not approved under section 38BA, the Authority may approve the application and grant a conditional release approval with controls if the Authority determines that,—

(a) after taking into account the matters in subsection (3), the new organism is likely to meet the minimum standards set out in section 36; and

(b) there is sufficient information available to assess the adverse effects of the organism; and

(c) after taking into account the matters in subsection (2), the positive effects of the organism outweigh the adverse effects of the organism and any inseparable organism.

(2) The matters to be taken into account under subsection (1)(c) are—

(a) all the effects of the organism and any inseparable organism; and

(b) the ability of the organism to establish a self-sustaining population; and

(c) the ease with which the organism could be recovered or eradicated if it formed a self-sustaining population.

(3) The matters to be taken into account in subsection (1)(a) are—

(a) the controls that will be imposed on the approval; and

(b) whether the controls are likely to be effective in meeting the objective of the controls; and

(c) the ease with which the organism could be recovered or eradicated if it formed a self-sustaining population.

38D Controls

(1) The controls that the Authority may impose on a conditional release approval include—

(a) controlling the extent and purposes for which organisms could be used:

(b) requiring any monitoring, auditing, reporting, and record-keeping:

(c) imposing any obligation to comply with relevant codes of practice or standards (for example, to meet particular co-existence requirements):

(d) requiring contingency plans to be developed to manage potential incidents:

(e) limiting the dissemination or persistence of the organism or its genetic material in the environment:

(f) requiring the disposal of any organisms or genetic material:

(g) limiting the proximity of the organism to other organisms,
including those that could be at risk from the conditionally released organism:

(h) setting requirements that must be met for any material derived from the organism:

(i) imposing obligations on the user of an approval, including levels of training or knowledge, limits on the numbers of users who may hold an approval, and the persons that they could deal with in respect of the organism:

(j) specifying the duration of the approval or of a control before requiring review by the Authority, and the nature of that review.

(2) Subsection (1) does not limit the type of controls the Authority may impose on a conditional release approval.

38E Duration of conditional release approval

(1) A conditional release approval that expressly states that it does not expire expires on the close of the date on which the last control to which the approval relates expires.

(2) In any other case, a conditional release approval expires on the earlier of the following:

(a) the date of expiry (if any) specified in the approval; or

(b) if no date of expiry is specified, 5 years after the date on which the approval is granted;

(c) the close of the date on which the last control to which the approval relates expires.

38F Consequences of expiry of conditional release approval

On the expiry of a conditional release approval, the new organism concerned must be disposed of unless, before the expiry of the approval, another approval has been granted under this Act.

38G Review of controls on conditional release approval

(1) The Authority may, on its own initiative or on the application of any user of a conditional release approval or of any person specified in section 97 or section 97A, review the controls that it has imposed on the conditional release approval, but only if—

(a) the review is to amend a control so that it better meets the objective of the control; or

(b) the control included a review requirement specifying—

(i) the circumstances in which the control would be reviewed; and

(ii) the potential consequences of the review.

(2) The Authority—

(a) may carry out the review without publicly notifying the
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review in accordance with section 53; but

(b) if it does so, must—

(i) consult, and consider the
views of, the Department of
Conservation and any other
government agency (as
defined in section 49A) that
the Authority considers is
likely to have an interest in
the review; and

(ii) publicly notify the
results of the review.

(Note: s. 53 requires
applications to be publicly notified)

(3) This section does not limit section 67A.
(Note:S67A: “The Authority ay, of its own
motion, amend any approval given by it
under this Part if it considers that the
alteration is minor in effect or corrects a
minor or technical error.”)

38H Restriction on release of new
organism subject to conditional release
approval

A person who did not obtain a conditional
release approval for a new organism that is
subject to a conditional release approval
must not release the new organism in
accordance with the approval

unless, before the release, the person has
given notice in writing to the Authority of
the proposed release.

Release of qualifying organisms

38I Assessment of applications for release
of qualifying organisms

(1) If the Authority receives an application
under section 34 that relates to a qualifying
organism, the Authority may—

(a) make a rapid assessment of the
adverse effects of importing for
release or releasing from
containment the qualifying
organism; and

(b) approve the importation for
release or the release from
containment of the qualifying
organism with or without controls.

(2) If the Authority does not approve an
application under this section, the Authority
must assess and determine the application
under section 38.

(3) The Authority or the responsible chief
executive, as the case may be, may
determine that a qualifying organism is or is
contained in a qualifying medicine or a
qualifying veterinary

medicine only if satisfied that, taking into
account all the controls that will be imposed
(if any), it is highly improbable that—

(a) the dose and routes of
administration of the medicine or
veterinary medicine would have
significant adverse effects on—

(i) the health of the public; or

(ii) any valued species; and
(b) the qualifying organism could form an undesirable self-sustaining population and would have significant adverse effects on—

(i) the health and safety of the public; or
(ii) any valued species; or
(iii) natural habitats; or
(iv) the environment.

(4) In determining under subsection (3) whether a qualifying organism is or is contained in a qualifying medicine or a qualifying veterinary medicine, the following effects (if any) are not to be taken into account:

(a) any effect of the medicine or qualifying organism on the person who is being treated with the medicine:
(b) any effect of the veterinary medicine or qualifying organism on the animal that is being treated with the veterinary medicine.

(5) An approval granted under this section is not an approval—

(a) to use a qualifying medicine until the medicine has been lawfully supplied for use under the Medicines Act 1981; or
(b) to use a qualifying veterinary medicine until the veterinary medicine has been approved for use under the Agricultural Compounds and Veterinary Medicines Act 1997.

38J Procedure for assessing and approving application by responsible chief executive

If the Authority has delegated to the responsible chief executive its power to assess and approve an application under section 38 for the release of a qualifying organism, the responsible chief executive must—

(a) be paid the fee set by the Authority for the assessment and approval of the application; and
(b) determine whether the medicine is a qualifying medicine or the veterinary medicine is a qualifying veterinary medicine, as the case may be; and
(c) if the responsible chief executive is satisfied that the medicine is a qualifying medicine or the veterinary medicine is a qualifying veterinary medicine, the responsible chief executive may, with or without controls, approve the release of the qualifying organism.

38K Controls

(1) The type of controls that may be imposed on the importation for release or release from containment of a qualifying organism include—

(a) controls for the distribution of the qualifying medicine or qualifying veterinary medicine:
(b) controls providing for the methods of administering the qualifying medicine or qualifying veterinary medicine:
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(c) controls concerning the persons who may administer the qualifying medicine or qualifying veterinary medicine:

(d) controls concerning the persons to whom the qualifying medicine may be administered:

(e) controls concerning the animals to which the qualifying veterinary medicine may be administered.

(2) Subsection (1) does not limit the type of controls that may be imposed on the importation for release or release from containment of a qualifying organism.

38L Review of controls for qualifying organisms

(1) The Authority may, on its own initiative or on the application of the holder of an approval under section 38I or of any person specified in section 97 or section 97A, review any controls that it has imposed on the approval, but only if—

(a) the review is to amend a control so that it better meets the objective of the control; or

(b) the control included a review requirement specifying—

(i) the circumstances in which the control would be reviewed; and

(ii) the potential consequences of the review.

(Note: s. 97 and 97 A relate to enforcement.)

(2) The Authority—

(a) may carry out the review without publicly notifying the review in accordance with section 53; but

(b) if it does so, must—

(i) consult, and consider the views of, any government agency (as defined in section 49A) that the Authority considers is likely to have an interest in the review; and

(ii) publicly notify the results of the review.

Note: Under s. 49A “government agency means—

a) a department specified in Schedule 1 of the State Sector Act 1988;

b) a Crown entity specified in Schedule 4 of the State Sector Act 1989;”

(3) This section does not limit section 67A. (Note: s. 67 enables the Authority to amend an approval if it considers that the alteration is minor in effect or corrects a minor or technical error.)

Containment approval for new organisms

39 Importation or development of new organisms in containment

(1) The Authority may approve the importation, development, or field testing
of any new organism into containment for the following purposes:

(a) the development of any new organism:
(b) field testing any new organism:
(c) maintaining a new organism for use in an emergency (as defined in section 46):
(d) the conservation of any genetic material:
(e) the public display of any organism including, but not limited to, display in a circus or zoological garden:
(f) maintaining a new organism in containment to produce antigens, biopesticides, biopharmaceuticals, enzymes, hormones, or vaccines for release:
(g) maintaining new organisms in containment for diagnostic purposes:
(h) such other purposes as the Authority thinks fit.

(2) A decision by the Authority under section 38 or section 38C or section 38I to decline an application does not prevent the Authority from granting an approval to import a new organism into containment, develop a new organism in containment, or field test a new organism in containment for 1 or more of the purposes specified in subsection (1).

(3) If an application has been made to the Authority for a conditional release approval, any person may apply to the Authority for approval to put the organism into containment and the application—

(a) must be treated in all respects as an application to import a new organism into containment; and
(b) may be granted only for 1 or more of the purposes specified in subsection (1).

(4) If an application has been made to the Authority for an approval under section 38I, any person may apply to the Authority for approval to put the qualifying organism into containment, and the application—

(a) must be treated in all respects as an application to import a new organism into containment; and
(b) may be granted only for 1 or more of the purposes specified in subsection (1).

40 Application for containment approval for new organisms

(1) Every person intending to import any new organism into containment, or develop or field test any new organism in containment, must apply to the Authority for approval to do so before importing, developing, or field testing the organism.

(2) Every application shall be in an approved form and shall include any information prescribed, information on all occasions where the organism has been considered by the government of
any prescribed State or country, or by any prescribed organisation, and the results of such consideration, information about the containment system for the organism,

(3) The Authority may, by written notice given to the applicant, require the applicant to verify an application by statutory declaration.

(4) An applicant may, by written notice to the Authority, withdraw the application at any time.

47 Application for approval to use a hazardous substance or new organism in an emergency

(1) Every person intending to—

(a) import any hazardous substance for release in an emergency; or
(b) import any new organism for release in an emergency; or
(c) release any new organism from containment in an emergency; or
(d) release any hazardous substance from containment in an emergency; or
(e) use any hazardous substance in an emergency in a manner which would otherwise contravene the provisions of this Act or any regulations—

shall, before importation or release or use, apply to the Authority for approval to import or release or use.

(2) Every application shall be in an approved form and shall include—

(a) information to identify the substance or organism; and
(b) information showing that the hazardous substance or new organism is necessary to deal with an emergency; and
(c) a proposed plan for dealing with the use of the substance or organism in the emergency; and
(d) all information relating to the effects of the substance or organism; and
(e) such other information as may be prescribed.

(3) The Authority may, by written notice given to the applicant, require the applicant to verify an application by statutory declaration.

(4) An applicant may, by written notice to the Authority, withdraw the application at any time.

48 Determination of applications

(1) The Authority may approve or decline an application under section 47, but may only decline the application if it is satisfied that—

(a) the organism or substance is not necessary for use in the emergency; or
(b) if the application relates to a substance, the proposed plan does not adequately control the adverse effects of the substance; or
(c) if the application relates to a new organism, the proposed plan does not adequately control the adverse effects of the organism or any inseparable organism (including, but not limited to, adequate control of the organism if the organism is likely to establish an undesirable self-sustaining population, taking into account the ease of destroying such a population).

(2) When approving the substance or organism in accordance with subsection (1), the Authority shall impose the following controls:

(a) that the substance or organism only be released when an emergency has been declared under this Act or declared in accordance with the provisions of any other Act:

(b) that the organism or substance only be released for a specified type of emergency:

(c) that the organism or substance may only be released if the emergency is dealt with in accordance with a specified plan which includes:

(i) the measures which must be taken to avoid, remedy, or mitigate any actual or potential adverse effects from the use of that substance or organism;

(ii) the requirements for the disposal of the hazardous substance and any waste products:

(iii) the requirements for the eradication or control of any new organism.

3) The Authority shall give its decision in writing, including reasons for the decision, give written notice of the decision to the applicant, and publicly notify it.

49 Exemptions from provisions of Act in emergencies

Subject to sections 49A to 50, nothing in this Act shall apply to any hazardous substance or new organism required for use in an emergency where—

(a) the emergency; or

(b) the use of the substance or organism in the emergency—

was not foreseeable.

49B Declaration of special emergency

(1) A responsible Minister may declare an adverse event to be a special emergency if the adverse event is a matter that comes within the Minister’s portfolio.

(2) A declaration of a special emergency—

(a) must be notified or published in the Gazette as soon as practicable after the special emergency is declared; and

(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

(3) A special emergency expires—
a) on the close of the date (if any) specified in the declaration as the expiry date;

or

b) if paragraph (a) does not apply, then on the close of a date specified by notice in the Gazette as the date of expiry of the emergency

(Note: s. 49A defines responsible minister as “the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of—

(a) this Act; or

(b) the Agricultural Compounds and Veterinary Medicines Act 1997; or

(c) the Biosecurity Act 1993; or

(d) the Conservation Act 1987; or

(e) the Fisheries Act 1996; or

(f) the Health Act 1956; or

(g) the Medicines Act 1981

49C Application of sections 49D to 49K

Sections 49D to 49K apply to a special emergency whether or not—

(a) the special emergency is foreseeable; and

(b) the importation, release, or use of an agricultural compound or medicine in the special emergency is foreseeable.

49D Application for approval to use agricultural compound or medicine in special emergency

(1) A person who does not have approval under this Act to do a thing specified in subsection (2) may apply to the Authority to do the thing in a special emergency.

(2) The things are—

(a) import any agricultural compound or medicine for release; or

(b) manufacture an agricultural compound or medicine that is a hazardous substance otherwise in containment; or

(c) release any agricultural compound or medicine from containment; or

(d) use any agricultural compound or medicine in a manner that would contravene this Act or any regulations.

(3) For the purposes of subsection (1),—

(a) it does not matter whether the application is made or approved before or after the special emergency has been declared:

(b) the applicant may import, release, or use the agricultural compound or medicine before the declaration of the special emergency has been notified or published in the Gazette.

49E Contents of application

(1) An application under section 49D must be in the approved form and must include
information required by the Authority that, having regard to the particular circumstances of the special emergency, the applicant can provide to the Authority in the time available.

(2) Without limiting subsection (1), the Authority may require the following information:

(a) information to identify the agricultural compound or medicine and the hazardous substance or new organism that is or is contained in the agricultural compound or medicine; and

(b) information showing that the agricultural compound or medicine is necessary to deal with the special emergency;

(c) a proposed plan for dealing with the use of the agricultural compound or medicine in the special emergency; and

(d) any reports by experts available from—

(i) the applicant:

(ii) any overseas regulatory agencies; and

(e) written confirmation by the applicant that the agricultural compound or medicine satisfies all relevant manufacturing practices and standards; and

(f) information on whether the agricultural compound or medicine has been approved for use in an overseas country; and

(g) information on whether approval for use of the agricultural compound or medicine has been declined in an overseas country; and

(h) information on the nature of the special emergency; and

(i) information on the nature of the agricultural compound or medicine; and

(j) information on the labelling of the agricultural compound or medicine; and

(k) all other prescribed information (if any).

(3) The Authority may, by written notice given to the applicant, require the applicant to verify the application by statutory declaration.

(4) An applicant may, by written notice to the Authority, withdraw the application at any time.

49F Determination of applications

(1) As soon as practicable after receiving an application under section 49D, the Authority must complete a rapid assessment of the application and decide whether to approve or decline the application.

(2) In determining whether to approve or decline the application, the Authority must—

(a) consult, and have particular regard to the views of, the Department of Conservation; and
(b) consult and consider the views of any other interested government agency; and

(c) consider all the information on the matters specified in section 49E that, having regard to the particular circumstances of the special emergency, the applicant can provide to the Authority in the time available.

(3) The Authority may decline the application only if it is satisfied that—

(a) the agricultural compound or medicine is not necessary for use in the special emergency; or

(b) if the application relates to a hazardous substance, the proposed plan does not adequately control the adverse effects of the hazardous substance; or

(c) if the application relates to a new organism, the proposed plan does not adequately control the adverse effects of the new organism or any inseparable organism (including, but not limited to, adequate control of the organism if the organism is likely to establish an undesirable self-sustaining population, taking into account the ease of destroying such a population).

If the Authority approves an application under section 49F, the Authority must impose the control that the agricultural compound or medicine may be released only if the special emergency is dealt with in accordance with the specified plan, and the plan includes—

(a) the measures that must be taken to avoid, remedy, or mitigate any actual or potential adverse effects from the use of the agricultural compound or medicine;

(b) the requirements for the disposal of the agricultural compound or medicine and any waste products;

(c) the requirements for the eradication or control of any new organism.

49H Notification or publication of approval of application

(1) An approval under section 49F and the reasons for the approval must be notified or published in the Gazette.

(2) The notified or published approval—

(a) must describe the special emergency to which it relates; and

(b) must specify where a copy of the plan for dealing with the use of the agricultural compound or medicine in the special emergency may be inspected or obtained; but

(c) need not specify what the approval has been granted for.

(3) If the approval is only notified in the Gazette,—
(a) the notice must specify where a copy of the approval may be inspected or obtained; and

(b) the Authority must make copies of the approval available for inspection free of charge, and for purchase at a reasonable cost, at the head office of the Authority and at any other places that the Authority determines as necessary or appropriate.

49I Effect of approval of release

(1) An approval for the importation, release, or use of an agricultural compound or medicine in a special emergency is limited to the importation, release, or use of the agricultural compound or medicine in the special emergency.

(2) If an approval relates to a new organism, the organism does not cease to be a new organism because it is released in accordance with the approval.

49J Duration of approval

An approval under section 49F takes effect on the day specified in the approval, and expires on the earlier of—

(a) the date of expiry (if any) of the special emergency specified by a responsible Minister in—

(i) the declaration declaring the special emergency; or

(ii) a later declaration declaring that the special emergency has ceased; or

(b) the date of expiry (if any) specified by the Authority in the approval, which must not be later than the date of expiry of the special emergency; or

(c) if paragraph (a) or paragraph (b) does not apply, 2 years after the date on which the approval is granted.

49K Consequences of expiry of approval

On the expiry of an approval under section 49F that relates to a hazardous substance or new organism, the hazardous substance or new organism must be disposed of unless, before the expiry of the approval, the applicant has, under any other provision of this Act, been granted an approval.

Prohibited list organisms

50 Prohibited organisms

(1) The importation or release or development of any organism specified in Schedule 2 is prohibited.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Schedule 2 to—

(a) add a new organism that the Authority has, under subsection (3), recommended to the Minister be included in the schedule:

(b) add a new organism, or group or groups of new organisms, that have adverse effects
on the health and safety of people or the environment:

(c) remove an organism or group of organisms, but only if the organism was inserted by Order in Council.

(2A) Subsection (2) applies subject to section 141. *(Note: s. 141 states procedures for making orders in Council)*

(2B) An organism in Schedule 2 that is prescribed as not a new organism in regulations made under section 140(1)(ba) is to be treated as if it had been removed from that schedule. *(Note: s. 140 (1)(ba) empowers the Governor-General by order in council, make a regulation prescribing organisms that are not new for the purposes of the HASNO Act)*

(3) The Authority may, after declining any application made under this Act in relation to an organism, recommend to the Minister that an Order in Council be made to include the organism in Schedule 2, where the Authority is satisfied that—

(a) the organism is likely to have any of the effects described in section 36; and

(b) any likely adverse effects which may occur should the organism escape from containment would outweigh any likely beneficial effects of allowing the organism to be imported into containment.

(4) The Authority, when making a recommendation under subsection (3), may advise the Minister that a group of organisms should be included in Schedule 2 if it is difficult for persons to distinguish between high-risk and low-risk members of that group.

(5) Every Order in Council made under this section shall be deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

*(2nd Schedule is included at the end)*

51 – Not relevant

**Procedure for assessment**

52 Applicant may be required to provide further information

(1) Where the Authority considers that an applicant is able to provide further relevant information, the Authority may, by written notice given to the applicant not later than 10 working days after the receipt of the application, require the applicant to supply such further information relating to the application as is specified in the notice.

(2) Where the applicant fails to comply with any request made in accordance with subsection (1) within 1 year after the date of the request, the application shall lapse.
53 Applications required to be publicly notified

(1) The following applications shall be publicly notified by the Authority:

   (ab) an application under section 38A for a conditional release approval for a new organism, if the application has not been approved under section 38BA:

   (b) an application, under section 34, to import for release any new organism, if the application has not been approved under section 35 or section 38I:

   (c) an application, under section 34, to release any new organism from containment, if the application has not been approved under section 38I:

   (d) an application, under section 40, to field test a genetically modified organism:

    (e) an application under section 47 to import, release, or use a hazardous substance or a new organism in an emergency:

    (f) an application under section 96B to issue, amend, or revoke a group standard.

(2) The Authority may, if it considers that there is likely to be significant public interest, publicly notify—

   (a) an application under section 40 in respect of a new organism (other than a genetically modified organism), if the application has not been approved under section 42C; or

   (b) an application under section 40 to import into containment or develop in containment a genetically modified organism, if the application has not been approved under section 42, 42A, or 42B; or

   (c) an application under section 28, if the application has not been approved under section 28A.

(3) The public notice shall state—

   (a) that any person may make a written submission on the application; and

   (b) a closing date for receipt of submissions by the Authority; and

   (c) the place where the application and accompanying information may be viewed, and the address for service of the Authority and the applicant unless that information has been withheld—

       (i) in accordance with the Official Information Act 1982; or

       (ii) in accordance with this Act.

(4) The Authority shall, upon receipt of the application, notify—

   (a) the Minister; and

   (b) any department listed in Schedule 1 of the State Sector Act 1988 and any Crown entity which, in the opinion of the Authority, is likely to have an interest in the application; and
(c) if the application is an application for approval of a new organism,—

(i) the Department of Conservation; and

(ii) any local authority (within the meaning of the Local Government Act 2002) if, in the opinion of the Authority, the local authority is likely to have an interest in the application

(4) The Authority must, as soon as practicable after determining a method of public notification in accordance with this section, publicly notify the method in accordance with paragraph (b) of the definition of public notice in section 2(1).

54 Submission on application

(1) Any person may make a written submission on any publicly notified application to the Authority.

(2) The submission—

(a) shall state the reasons for making the submission;

(b) may state any decision sought; and

(c) shall state whether the person making the submission wishes to be heard.

(3) The Authority shall forward a copy of every submission to the applicant as soon as reasonably practicable after receipt of it by the Authority.

55 Information held on behalf of applicant

(1) Where any person—

(a) supplies any information to the Authority; and

(b) the information is likely to relate to an application for approval; and

(c) the relevant application has not yet been lodged with the Authority,—
the information shall be held by the Authority on behalf of that person; and the provisions of the Official Information Act 1982 shall not apply to that information until the relevant application has been received by the Authority.

(2) Where any information supplied under subsection (1) is held by the Authority on behalf of any person, that information shall be returned upon request.

(3) Where—

(a) any information is held by the Authority relating to any application made under this Act in respect of a hazardous substance or new organism; and

(b) the substance or organism that is the subject of the application is also the subject of an innovative medicine application as defined in section 23A of the Medicines Act 1981; and

(c) that information includes trade secrets or information that has commercial value that would be, or would be likely to be, diminished by disclosure,—

the provisions of sections 23A to 23C of the Medicines Act 1981, with the necessary modifications, shall apply to that information as if the information were confidential supporting information as defined in section 23A of that Act.

(4) The provisions of sections 23A to 23C of the Medicines Act 1981, with the necessary modifications, shall also apply to the Authority in respect of the information referred to in subsection (3) as if the Authority were the Minister of Health, and as if references in those sections to applications were references to applications in respect of hazardous substances or new organisms; but—

(a) the protected period (as defined in section 23A of the Medicines Act 1981) shall be the same period for which the information is protected under the Medicines Act 1981; and

(b) the Authority may disclose the information to any prescribed person or organisation or prescribed class of persons or organisations; and

(c) the Authority shall provide a summary of the effects of any substance or organism in respect of which subsection (3) of this section applies where an application for approval is required to be publicly notified in accordance with section 53.

(4A) Where—

(a) any information is held by the Authority relating to any application made under this Act in respect of a hazardous substance or new organism; and

(b) the substance or organism that is the subject of the application is also the subject of an innovative agricultural compound application as defined in Part 6 of the...
the provisions of Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997, with the necessary modifications, apply to that information as if the information were confidential supporting information as defined in that Part of that Act.

(4B) The provisions of Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997, with the necessary modifications, apply to the Authority in respect of the information referred to in subsection (4A) as if the Authority were the Director-General, and as if references in those sections to applications were references to applications in respect of hazardous substances or new organisms; but—

(a) the protected period (as defined in Part 6 of the Agricultural Compounds and Veterinary Medicines Act 1997) is the same period for which the information is protected under the Agricultural Compounds and Veterinary Medicines Act 1997; and

(b) the Authority may disclose the information to any prescribed person or organisation or prescribed class of persons or organisations; and

(c) the Authority must provide a summary of the effects of any substance or organism in respect of which subsection (4A) applies where an application for approval is required to be publicly notified in accordance with section 53.

(7) The Governor-General may, from time to time, by Order in Council, make regulations prescribing persons or organisations or classes of persons or organisations for the purposes of subsections (4)(b) and (4B)(b).

Consideration of information withheld under Official Information Act 1982

Any information withheld from any person in accordance with section 9(2)(b) of the Official Information Act 1982 may be considered by the Authority in reaching a decision under this Act.

57 Authority to withhold information

(1) Where, in the Authority’s opinion, any information which has been supplied to the Authority in respect of any application may be able to be withheld under section 9(2)(b) of the Official Information Act 1982, that information shall not be released to any person when any application is publicly notified.

(2) Where—

(a) the Authority receives a request to release any information held by the Authority under the Official Information Act 1982; and
(b) the information to which the request relates,—

(i) in the Authority’s opinion, may be able to be withheld under section 9(2)(b) of that Act; or

(ii) has been classified as commercially sensitive by the person who gave the information to the Authority,—

the Authority shall make all reasonable efforts to contact and notify immediately the person who gave the information to the Authority that a request to release the information has been received.

(3) Where a person receives notice from the Authority under subsection (2), that person shall, within 10 working days of receipt of the notice, respond to the Authority stating whether that person believes that the information should be withheld under section 9(2)(b) of the Official Information Act 1982 and give reasons for that person’s belief.

(4) The Authority may release the information or withhold the information in accordance with the Official Information Act 1982 if—

(a) the Authority has complied with subsection (2); and

(b) the time limit specified in subsection (3) has expired.

58 Further information

(1) The Authority—

(a) may commission a report or seek advice from any person on any matters raised in relation to the application, including a review of any information provided by the applicant:

(b) may obtain any existing relevant information on the substance or organism which is the subject of the application from any source:

(c) shall consult with all departments or Crown entities notified of the application in accordance with section 53(4) and, where any application is for approval to import, develop, field test, conditionally release, or release a new organism, have particular regard to any submissions made by the Department of Conservation.

(1A) Any report, advice, or other information obtained under subsection (1) may be considered at any hearing conducted by the Authority.

(2) Where the Authority obtains further information under subsection (1), the Authority, at least 10 working days before commencement of the hearing or consideration, as the case may be, of the application, shall notify the applicant and every person who made a submission that the information is available for inspection, unless that information has been withheld in accordance with section 9(2)(b) of the Official Information Act 1982.
(3) Where information is requested in accordance with subsection (1), the Authority may postpone the hearing or consideration of the application until the information has been received.

59 Time limits and waivers

(1) The Authority shall,—

(a) where public notification of an application is required by section 53, publicly notify that application within 10 working days of receipt unless paragraph (b) applies to that application:

(b) if any of sections 28A, 35, 38BA, 38I, 42, 42A, 42B, and 42C apply to the application,—

(i) make a rapid assessment of the application within 10 working days after receipt of the application; and

(ii) if the application is not approved under one of those sections, publicly notify the application, if required under this Act, within 10 working days of the Authority’s decision:

(c) allow 30 working days from the date of public notification for the receipt of submissions:

(d) fix a date for commencement of the hearing or (where there is no hearing) for consideration of the application, being not more than 30 working days after the receipt of the application or the closing date for submissions, whichever is the later:

(e) give the applicant at least 10 working days’ notice of the commencement date and the time and place of the hearing or consideration of the application:

(f) give every person who has made a submission on the application and who has stated his or her wish to be heard, at least 10 working days’ notice of the commencement date and the time and place of the hearing.

(2) The Authority shall publicly notify its decision as soon as reasonably practicable but not later than 30 working days after the conclusion of the hearing or, where there is no hearing, the consideration of the application.

(3) A person may apply to the Authority to—

(a) waive a requirement of this Act or a regulation concerning—

(i) the time within which any action shall be carried out; or

(ii) the information that shall be supplied; or

(b) give a direction concerning—

(i) the time within which any action shall be carried out; or

(ii) the terms, including terms as to adjournment,
costs, or other matters, on which any information shall be supplied.

(4) The Authority shall not extend or reduce any time period or grant an application under this section to waive a requirement as to the time within which any action shall be carried out unless it is satisfied that—

(a) the applicant and the persons making submissions consent to that waiver; or

(b) any of those parties who have not so consented will not be unduly prejudiced.

(5) Subject to subsection (4), the Authority may at any time extend or reduce any time limit under this Act whether or not—

(a) an application has been made under this section; or

(b) that time limit has expired,—

but in all cases must ensure the matter is carried out as promptly as is reasonable in the circumstances.

60 Obligation to hold hearing

A hearing of any application need not be held unless—

(a) the Authority considers that a hearing is necessary; or

(b) the applicant has made a written request to the Authority for a hearing; or

(c) a person who has made a submission stated in that submission that he or she wishes to be heard and has not subsequently advised that he or she does not wish to be heard.

61 Provisions relating to hearings

(1) The Authority shall consider and decide any application, other than an application which is the subject of a Ministerial direction under section 68.

(2) The Authority shall keep a record of all proceedings before it.

(3) For the purpose of considering any application, the Authority shall have the same powers as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1908; and sections 4, 4B, 4D, 6, 7, 9, 11, and 12 of that Act shall apply accordingly.

(4) The members of the Authority shall have, in relation to any such consideration and any decision on any matter, the same immunities and privileges as are possessed by a District Court Judge.


(5) Every summons to a witness to appear at a hearing shall be in an approved form and be signed by the person chairing the hearing.
(6) All allowances for a witness shall be paid by the party on whose behalf the witness is called.

(7) The Authority shall hold any hearing of a publicly notified application in public and shall establish a procedure that is appropriate and fair in the circumstances and may—

(a) permit cross-examination; or
(b) permit questions in clarification; or
(c) permit only the members of the Authority to question any person.

(8) At the hearing the applicant and any person who made submissions and stated that they wished to be heard may speak (either personally or through a representative) and call evidence.

(9) Where any person who has stated that he or she wished to be heard fails to appear at the hearing, the Authority may nevertheless proceed with the hearing if it considers it fair and reasonable to do so.

62 Grounds for reassessment of a substance or organism

(1) —

(a) any person; or
(b) the chief executive of the Authority—

may at any time request the Authority to decide whether there are grounds for reassessing any new organism in containment, any conditionally released new organism, any qualifying organism released with controls, or any hazardous substance where that organism or substance has previously been assessed by the Authority or where Parts 11 to 16 apply to that substance or organism.

(2) Where any request has been made under subsection (1), the Authority may decide that grounds exist to reassess that substance or organism after taking into account that—

(a) significant new information relating to the effects of the substance or the organism has become available; or
(b) another substance with similar or improved beneficial effects and reduced adverse effects has become available; or
(c) information showing a significant change of use, or a significant change in the quantity manufactured, imported, or developed has become available.

(3) The Authority shall give its decision under subsection (2) in writing, with reasons, to the applicant.

Part 7
Inspection, enforcement, and ancillary powers

Inspection
97 Enforcement of Act

(1) The following persons shall ensure the provisions of this Act (including any controls imposed on approvals granted under this Act) are enforced in the following situations:

(a) the chief executive of the department of State that is for the time being responsible for the administration of the Health and Safety in Employment Act 1992 shall ensure that the provisions of this Act are enforced in any place of work:

(b) the chief executive of the department of State that is for the time being responsible for the administration of the Gas Act 1992 shall ensure that the provisions of this Act are enforced in, on, at, or around any distribution system, gas installation, or gas appliance:

(c) the New Zealand Transport Agency may enforce the provisions of this Act in or on any motor vehicle, on any road, in or on any rail vehicle, or on any railway line:

(d) the Commissioner of Police (after consultation with the New Zealand Transport Agency) shall ensure that the provisions of this Act are enforced in or on any motor vehicle, on any road, in or on any rail vehicle, or on any railway line:

(e) the Director of the Civil Aviation Authority shall ensure that the provisions of this Act are enforced in or on any aircraft:

(f) the Director of Maritime Transport shall ensure that the provisions of this Act are enforced in or on any ship:

(g) the chief executive of the Ministry of Health shall ensure that the provisions of this Act are enforced where it is necessary to protect public health:

(h) the chief executive of any territorial authority—

(i) shall ensure that the provisions of this Act are enforced in or on any premises situated in the district of the territorial authority other than those premises specified in paragraphs (a) to (g):

(ii) may enforce the provisions of this Act in or on those premises specified in paragraphs (a) to (g) where the territorial authority is in or on those premises for the purposes of enforcing the provisions of the Resource Management Act 1991:

(iii) shall ensure that the provisions of this Act are enforced in or on those premises specified in paragraphs (a) to (g), where the function, power, or duty is transferred to the territorial authority in accordance with section 98:

(iv) shall ensure that the provisions of this Act are
enforced in or on those premises specified in paragraphs (a) to (g) in respect of any substances to which Part 14 applies.

(2) The chief executive of a regional council may—

(a) enforce the provisions of this Act in or on those premises specified in subsection (1)(a) to (g) if the regional council is in or on those premises for the purposes of enforcing the provisions of the Resource Management Act 1991:

(b) enforce the provisions of this Act in or on those premises specified in subsection (1)(a) to (g) if the function, power, or duty is transferred to the regional council in accordance with section 98.

97A Enforcement of Act in respect of new organisms

(1) The enforcement agency must ensure that the provisions of this Act are enforced in respect of new organisms.

(2) For the purpose of complying with subsection (1), the enforcement agency may appoint enforcement officers in accordance with this Act who may exercise also the powers of inspectors under the Biosecurity Act 1993 that may be exercised in respect of an unwanted organism, and the provisions of that Act apply with all necessary modifications.

(3) A person who may exercise powers under the Biosecurity Act 1993 in respect of unwanted organisms may also exercise those powers under that Act in respect of new organisms whether or not the person is appointed as an enforcement officer under this Act.

(4) Without limiting subsection (2), the provisions of the Biosecurity Act 1993 that apply, with all necessary modifications, for the purposes of this section include sections 162A, 163, and 164 of that Act.

(4A) The enforcement agency’s costs of enforcing this Act in respect of new organisms are to be treated as if they were costs of administering the Biosecurity Act 1993, and—

(a) may be recovered in accordance with section 135 of that Act; and

(b) may be funded by a levy imposed under section 137 of that Act; and

(c) may be prescribed, in regulations made under section 165(1)(s) of that Act, as costs that are recoverable.

(Note: s. 135 of the Biosecurity Act empowers the relevant authority to “take all reasonable steps to ensure that so much of the costs of administering this Act, including costs incurred as the management agency of a pest management strategy, as are not provided for by money appropriated by Parliament are recovered in accordance with the principles of equity and efficiency in accordance with this section and the regulations”. The section sets criteria for
determining the recovery of costs. S. 37 empowers the government to impose a levy for wholly or partially funding a biosecurity service or function. )

(5) In this section,—

**enforcement agency** means the chief executive of the department of State responsible for the administration of the Biosecurity Act 1993

**unwanted organism** has the same meaning as in section 2(1) of the Biosecurity Act 1993.

103 Powers of entry for inspection

(1) Any enforcement officer may, at any reasonable time,—

(a) go on, into, under, and over any premises (excluding dwellings); or

(b) with the consent of the occupier, go on, into, under, and over a dwelling—

for the purpose of inspection to—

(c) monitor compliance with the conditions or controls on any hazardous substance or new organism in any premises where a hazardous substance or new organism approved under this Act is located; or

(d) determine the nature of any substance or organism in the premises; or

(e) determine whether or not any person is complying with a compliance order.

(2) For the purposes of subsection (1), an enforcement officer may—

(a) take samples of water, air, soil, any substance, or any organism; and

(b) open containers or packages (including secured or sealed containers or packages) to inspect the contents; and

(c) take photographs and measurements and make sketches and recordings; and

(d) take or remove any thing for analysis or testing; and

(e) conduct examinations, tests, inquiries, demonstrations, and inspections; and

(fa) require that any place or thing specified by the enforcement officer is not disturbed for a reasonable time pending any examination, test, inquiry, demonstration, or inspection; and

(eb) require the making of statements by the person in charge of the premises, in any form or manner specified by the enforcement officer, about conditions, material, or equipment relevant to the purpose of the inspection; and

(f) require the production of any documents relevant to the purpose of the inspection; and

(g) take copies of the documents or information or extracts from those documents or information.
(3) Where any enforcement officer has taken any thing in accordance with subsection (2)(d), the enforcement officer shall give the occupier of the premises written notice of the things that have been taken, the reason for taking the things and where the things will be kept.

(4) Within 5 working days of removing the thing the enforcement officer shall give the person in charge of the premises written notice stating—

(a) whether or not the thing will be returned or destroyed; and

(b) either—

(i) the time and date of the return of the thing to the premises; or

(ii) the results of the analysis of the thing and why it is being destroyed.

(5) Every enforcement officer exercising any of the powers conferred under this section shall, at the time of exercising that power, and thereafter on request, produce—

(a) evidence of that person’s appointment as an enforcement officer; and

(b) evidence of that person’s identity.

(6) An enforcement officer may take any person with relevant experience or expertise on to the premises to assist the officer with the inspection.

(7) Nothing in this section shall limit or affect the privilege against self-incrimination.

Compliance orders

104 Scope of compliance order

(1) A compliance order may be served on any person by an enforcement officer—

(a) requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—

(i) contravenes or is likely to contravene this Act, any regulations, or a control imposed by an approval under this Act; or

(ii) relates to any hazardous substance or new organism and is or is likely to be dangerous, to such an extent that it has or is likely to have an adverse effect on the health and safety of people or the environment; or

(b) requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure that person complies with this Act, any regulations, controls imposed by an approval granted under this Act, or is necessary to avoid, remedy, or
mitigate any actual or likely adverse effects on people or the environment resulting from any breach of any regulations or any controls imposed by an approval granted under this Act—

(i) caused by or on behalf of the person; or
(ii) relating to any land of which the person is the owner or occupier.

(2) A compliance order may be made subject to such conditions as are reasonable in the circumstances.

105 Compliance with compliance order

Subject to the rights of appeal in section 125, any person on whom a compliance order is served shall—

(a) comply with the order within the period specified in the order; and

(b) unless the order directs otherwise, pay all the costs and expenses of complying with the order.

Enforcement

109 Offences

(1) Every person commits an offence against this Act who—

(a) manufactures any hazardous substance in contravention of this Act; or

(b) develops or field tests a new organism in contravention of this Act; or

(c) knowingly imports or releases a new organism in contravention of this Act; or

(d) knowingly, recklessly, or negligently—

(i) manufactures, imports, develops, uses, or disposes of any hazardous substance or new organism where any approval is suspended in accordance with section 64:

(ii) possesses or disposes of any hazardous substance or new organism imported, manufactured, developed, or released in contravention of this Act; or

(e) fails to comply with—

(i) any controls imposed by any approval granted under this Act; or

(ii) any controls specified in any regulations; or

(iii) any requirement to obtain a test certificate specified in any regulations; or

(ea) fails to comply with a condition on a licence or permission granted under section 95A or section 95B; or

(eb) fails to comply with a condition imposed under section 96B(1)(b) on

(aa) imports, manufactures, uses, or stores a persistent organic pollutant in contravention of this Act; or

(b) develops or field tests a new organism in contravention of this Act; or

(c) knowingly imports or releases a new organism in contravention of this Act; or
an identified group of hazardous substances; or

(f) fails to comply with any compliance order served under section 107; or

(g) fails to comply with any of the requirements of section 124; or

(h) fails without any lawful justification or excuse to obtain any transferable permit when required to do so by any Order in Council in force under this Act; or

(i) being a manufacturer, developer, or importer of any hazardous substance or new organism knowingly fails to report any significant new information of any adverse effect of that hazardous substance or new organism; or

(j) knowingly personates any enforcement officer; or

(k) wilfully obstructs any enforcement officer in the course of his or her duties; or

(l) falsely informs a person that an emergency exists where that person knows the information to be false; or

(m) knowingly labels any package or container in such a manner that the label could in an emergency wrongly indicate the presence of hazardous substances to an enforcement officer, fire services officer, or constable.
**Hazardous Substances and New Organisms Act 1996**

*Schedule 2 ss 25(2), 50(1)–(4)*

Prohibited new organisms

1. Any snake of any species whatever.
2. Any venomous reptile, venomous amphibian, venomous fish, or venomous invertebrate. (In this item, *venomous* means capable of inflicting poisonous wounds harmful to human health.)
3. Any American grey squirrel (*Sciurus carolinensis gmelini*).
4. Any red squirrel (*Sciurus vulgaris*).
5. Any musquash (or muskrat) (*Ondatra zibethica*).
6. Any coypu or nutria (*Myocastor coypus*).
7. Any beaver (*Castor canadensis*).
8. Any gerbil (*Meriones unguiculatus*).
10. Any pocket gopher (*Geomys* spp and *Thomomys* spp).
11. Any red or silver fox (*Vulpes vulpes*).
12. Any Arctic fox (*Alopex lagopus*).
13. Any mongoose (family Herpestidae) other than *Suricata suricatta*.
14. Any member of the family Mustelidae, subfamily Mustelinae, other than ferrets (*Mustela furo*), weasels (*Mustela nivalis*), and stoats (*Mustela erminea*), and subfamily Lutrinae, other than oriental small clawed otter (*Aonyx cinerea*).
15. Any mole (family Talpidae).
16. Any member of the family Esocidae (eg, pikes, muskellunge).
17. Any member of the families Phalangeridae and Petauridae, other than the Australian brushtail possum (*Trichosurus vulpecula*).
20. Any predatory snail (*Euglandina rosea*).
21. Any cane toad (*Bufo marinus*).
22. Any negro root (*Cassia occidentalis*).
23. Any skeleton weed (*Chondrilla juncea*).
24. Any *Cymbopogon schoenanthus*.
25. Any *Cynanchum* (all species), eg, Indian swallowart.
26. Any hairy thorn apple (*Datura metel*).
27. Any Indian hemp (*Ephedra sinica*).
28. Any leafy spurge (*Euphorbia esula*).
29. Any star of Bethlehem, Pua-hoku (*Hippobroma longiflora*).
30. Any poverty weed (*Iva axillaris*).
(31) Any member of the family Loranthaceae (e.g. mistletoe), other than Alepis flavida, Lleostylus micranthus, Peraxilla colensoi, Peraxilla tetrapetala, Trilepidea adamsii, and Tupeia antarctica.

(32) Any member of the genus Korthalsella other than Korthalsella clavata, Korthalsella lindsayi, and Korthalsella salicornioides.

(33) Butterbur (Petasites hybridus).

(34) Witchweed (all species) (Striga).

(35) Strychnine (Strychnos nux-vomica).

(36) Tourrettia volubilis.

(37) Puncture vine (Tribulus terrestris).

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**BIOSECURITY NEW ZEALAND**

**RISK ANALYSIS PROCEDURES**

Version 1 12 April 2006

These procedures have been approved by: Debbie Pearson Director
Pre-Clearance Biosecurity New Zealand

The review of the Biosecurity New Zealand risk analysis process and methodology was to a large extent a review of the procedures provided in Murray, N (2002). Import Risk Analysis. Animals and Animal Products.
New Zealand Ministry of Agriculture and Forestry and as such, much of the text contained in this review document is similar to that contained in these procedures.
INTRODUCTION

These procedures have been developed for use by Biosecurity New Zealand staff, or those contracted to provide services to Biosecurity New Zealand, to undertake risk analyses to support the New Zealand biosecurity risk management decision making process.

The procedures are presented in six main chapters:

Chapter 1: Provides an overview of the risk analysis framework and includes the principles behind the framework
Chapter 2: Provides information on the prioritisation setting process for the risk analysis work programme
Chapter 3: Provides information and guidance on the management of risk analysis projects
Chapter 4: Details the steps required to complete a risk analysis to appropriate standards
Chapter 5: Provides guidance on how the risk analysis should be documented, and the information used to developed the risk analysis recorded
Chapter 6: Provides a glossary of terms used in the procedures

Appendices:
- Information on the legislative requirements for risk analysis development;
- A check list for recording project and risk analysis development;
- Process diagrams for risk analysis.

REVIEW TIMETABLE

These procedures are considered a living document, and as such it is expected improvements will be made to these procedures as and when required. A full review of these procedures will be undertaken once they have been implemented and sufficient experience has been gained in their use. Any significant changes to these procedures will be consulted with key stakeholders.

ACKNOWLEDGEMENTS

The project manager would like to thank the staff of the risk analysis, biosecurity standards and biosecurity policy groups who participated in the project through the project team, the development of the many documents including these procedures, and the workshops to develop and test aspects of the drafts of these procedures. Special thanks also to the staff of ERMA New Zealand, the Department of Conservation, and the Ministry of Health who provided valuable advice and comment on the project and the new risk analysis framework.
A final note of thanks to John Hellstrom of Biosecurity Ltd, whose roles in facilitating workshops and analysing stakeholder expectations were invaluable to the successful completion of this project.

Dr Michael Ormsby
Project Manager
Senior Adviser Risk Analysis
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1. Risk Analysis for Biosecurity in New Zealand

1.1 Introduction

The key deliverables for the Ministry of Agriculture and Forestry are:

- encouraging high-performing sectors;
- developing safe and freer trade;
- ensuring healthy New Zealanders;
- and protecting our natural resources.

Within the Ministry of Agriculture and Forestry, Biosecurity New Zealand has been tasked with a ‘whole of system’ leadership role, encompassing economic, environmental, social and cultural outcomes in the management of biosecurity risks to New Zealand\(^5\).

Biosecurity for New Zealand has been defined as:

> “The exclusion, eradication or effective management of risks posed by pests and diseases to the economy, environment and human health.” (Biosecurity Strategy 2003\(^6\))

Risk analysis undertaken for biosecurity is concerned with supporting the risk management decision making process to effectively manage the biosecurity risks to New Zealand’s economy, environment and human health associated with the movement of goods or


\(^6\) The Biosecurity Strategy for New Zealand. 2003. http://www.biosecurity.govt.nz/strategy-and-consultation/strategy/strategy 3 A conveyance can include packaging (material used to support the goods during transport) and any containers associated with a commodity, passengers, and any vessel (sea vessel or aeroplane) in or on which a commodity might be transported. 4 “Disease” is included with “organisms” to ensure syndromes of no known cause are included in the scope of the risk analysis programme. 5 Murray, N (2002). Import Risk Analysis. Animals and Animal Products. New Zealand Ministry of Agriculture and Forestry. pp183. The review of the Biosecurity New Zealand risk analysis process and methodology was to a large extent a review of the procedures provided in this publication and as such, much of the text contained in the review documents is similar to that contained in this publication.
conveyances\textsuperscript{7} into New Zealand and the eradication or management of unwanted organisms or diseases\textsuperscript{8} established in New Zealand. In this context risk analysis can be thought of as a process to provide recommendations on the likelihood of an organism or disease entering, establishing or spreading in New Zealand, its likely impact on animal, plant or human health, the environment and the economy, and the options available for managing the identified risk. While some form of risk analysis has always been undertaken, it is only in the last decade, particularly following the implementation of the World Trade Organization’s Agreement on the Application of Sanitary and Phytosanitary Measures (the so-called SPS Agreement), that formal methodologies have been developed and transparent processes have emerged (Murray 2002\textsuperscript{9}).

The primary design objective for the new framework is to ensure that stakeholders, risk analysts and decision-makers can be confident that recommendations, on the level of protection required to manage the risks posed by unwanted organisms and diseases, are being developed appropriately. The risk analysis activities covered by the new framework are focused mainly on the movement of goods or conveyances into New Zealand. Procedures for risk analysis activities associated with the management or eradication of unwanted organisms and diseases established within New Zealand will be provided in a separate document.

\section*{1.2 MAF’s Domestic and International Responsibilities}

MAF’s domestic and international responsibilities and obligations for the effective management of biosecurity risks are provided principally by the Biosecurity Act (1993), the SPS Agreement (1994), and the relevant international standard setting bodies recognised under the SPS Agreement; namely the \textit{World Organisation for Animal Health} and the \textit{International Plant Protection Convention}. There are however other international articles that also provide further related responsibilities or obligations, most notably including the \textit{Convention on Biological Diversity}, the \textit{International Health Regulations}, and publications produced by the \textit{International Maritime Organization}. Further information on the above is

\begin{footnotesize}
\begin{footnotes}{\textsuperscript{7}} A conveyance can include packaging (material used to support the goods during transport) and any containers associated with a commodity, passengers and any vessel (sea vessel or aeroplane in or on which a commodity might be transported.

\begin{footnotes}{\textsuperscript{8}} “Disease” is included with “organism” to ensure syndromes of no known cause are included in the scope of the risk analysis programme.

\begin{footnotes}{\textsuperscript{9}} Murray, N. (2002) Import Risk Analysis. Animals and Animal Products. New Zealand Ministry of Agriculture and Forestry. Pp 183. The review of the Biosecurity New Zealand analysis process and methodology was to a large extent a review of the procedures provided in this publication and as such, much of the text contained in the review documents is similar to that contained in this publication.
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Before attempting to describe the New Zealand biosecurity system as it relates to the management of risks related to trade, it is important that the four terms that result in most confusion are defined: risk, risk assessment, risk management, and risk analysis.

i) **Risk**: the likelihood of the occurrence and the likely magnitude of the consequences of an adverse event.

ii) **Risk assessment**: the evaluation of the likelihood, and the biological and economic consequences, of entry, establishment, or exposure of an organism or disease.

iii) **Risk management**: the process of identifying, selecting and implementing measures that can be applied to reduce the level of risk.

iv) **Risk analysis**: the process comprising hazard identification, risk assessment, risk management and risk communication.

Within New Zealand biosecurity there are three main risk analysis-related processes to support or inform the biosecurity risk management system. The three processes can be summarised as:

1) **Import risk analysis**: to identify appropriate risk-mitigating options for the development of import health standards. These risk analyses can focus on an organism or disease, a good or commodity, a pathway, or a method or mode of conveyance such as shipping, passengers or packaging.

2) **Pest risk assessment**: to measure the level and nature of biosecurity risk posed by an organism. A pest risk assessment can be used to inform biosecurity surveillance activities or identify pests of high risk to New Zealand.

3) **Organism consequence assessment**: to measure the level and nature of the consequences of an organism or disease that has established in New Zealand. An organism consequence assessment is most often used to inform response and/or pest management programs within New Zealand.

This document provides an overview of the process to be used for import health standard-related risk analysis activities undertaken by Biosecurity New Zealand. As pest risk assessment is a subset of the risk analysis process, this document also incorporates the process and methodology for pest risk assessment activities. While the organism consequence assessment process and methodology is equivalent to aspects of the risk analysis process, it is undertaken to inform pest and disease eradication or management programmes, and as such will be developed separately.
1.3 Key Principles behind the Framework

The following key principles define the nature and performance of the risk analysis programme delivered by Biosecurity New Zealand:

Effective: That each risk analysis accurately measures the risks to the extent necessary and identifies mitigation options that achieve a level of protection appropriate for New Zealand.

Efficient: The risk analysis programme avoids duplication and unnecessary use of resources, meets agreed timeframes, and focuses on the areas of greatest priority.

Transparent: That the reasoning and evidence behind the decisions recommended by the risk analysis, and areas of uncertainty and their possible consequences to those recommendations, are clearly documented and made available to stakeholders.

Consistent: That all risk analyses completed by Biosecurity New Zealand achieve the same high level of performance and provide recommendations that deliver to the appropriate level of protection for New Zealand using a common process and methodology.

Comprehensive: That the full range of values, including economic, environmental, social and cultural, are considered when assessing risks and determining mitigation options.

Risk Management: That zero risk is not obtainable and as such risk is managed through deciding in each instance what should be considered an acceptable level of risk.

Precautionary: That the risk analyst will incorporate a level of precaution in the import risk analyses to account for uncertainty; for instance when making a professional judgement on whether available information is sufficient, when making assumptions, and when selecting risk management options. Where there is insufficient information, provisional measures may be recommended recognising the obligation to seek additional information.

Science based:

The risk analysis should be based on the best available information that is in accord with current scientific thinking. The risk analysis process and the determination of the appropriate level of protection should not be compromised by pressures of trade or protection.
Compliant: That the risk analysis process and methodology meets the needs of and complies with New Zealand’s domestic legislation and international obligations.

The following risk analysis framework has been developed to provide the greatest opportunity for risk analysts working within the Biosecurity New Zealand risk management programme to deliver to these principles.

1.4 Scope of a Risk Analysis

As mentioned above, a risk analysis can focus on an organism or disease, a good or commodity, a pathway, or a method or mode of conveyance.

The scope of an import risk analysis will include organisms or diseases potentially associated with a good or conveyance entering New Zealand, or a particular pathway for a good or goods entering New Zealand. Under New Zealand’s key piece of biosecurity-related legalisation, the Biosecurity Act (1993), “risk goods” are defined as:

.... any organism, organic material, or other thing, or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may:
(a) Cause unwanted harm to natural and physical resources or human health in New Zealand; or
(b) Interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms.

Risk goods can be of plant or animal origin, or they can be inanimate objects. A conveyance can include packaging (material used to support the goods during transport) and any containers associated with a commodity, passengers, and any vessel (sea vessel or aeroplane) in or on which a commodity might be transported.
The scope of a pest risk assessment will include all or selected pathways for the entry of a particular pest or disease or group or class of pests or diseases.

Any framework for undertaking risk analyses to identify appropriate measures must consider risks from all risk goods or organisms to the following, as defined in the Biosecurity Act (1993) (section 22):

| The nature and possible effect on people, the New Zealand environment, and the New Zealand economy of any organisms that the goods specified in an import health standard may bring into New Zealand |

“Environment” is further defined to include:

- Ecosystems and their constituent parts, including people and their communities; and
- All natural and physical resources; and
- Amenity values; and
- The aesthetic, cultural, economic, and social conditions that affect or are affected by any matter referred to in paragraphs (a) to (c) of this definition.

1.5 International Risk Analysis Frameworks

The Biosecurity Act (1993) does not itself provide a framework for undertaking assessments or analyses of risk, but in the case of developing import requirements for risk goods for example, requires that the Chief Technical Officer recommending the import health standard for approval must have had regard to New Zealand’s international obligations. The international risk analysis frameworks most relevant to establishing measures in the trade of risk goods are provided under the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC) as follows:

**OIE:** The risk analysis chapter in the *Terrestrial Animal Health Code* provides guidelines for
the placement of measures to prevent the introduction of organisms that may have negative consequences for animals, humans, and environment (including plants), through the importation of animals and animal products.

**IPPC:** The *International Standards for Phytosanitary Measures (ISPM)* Nos. 2, 11 and 21 together provide a risk analysis process on which to base the consideration of the risks to plant health from pests or diseases imported on plants and plant materials, and regulated articles, including inanimate objects.

It is important to note that under these two standard setting bodies, application of the risk analysis frameworks are limited by the mandates of the organisations. The OIE framework can not be applied to animal and human health pests carried on inanimate objects and plants or plant products, while the IPPC framework can only be applied to the placement of measures for pests and diseases carried by these products if they impact plant health. As such, pests and diseases that can be carried by plant products or inanimate objects that impact on human and animal health are not covered under either the OIE or the IPPC.

However, although the SPS agreement requires international guidelines to be followed where they exist, the SPS agreement provides for measures to be developed in the absence of standards provided a risk analysis is performed that supports the measures. The agreement also allows consideration of the economic consequences resulting from introduction of an organism into an animal, human, or plant population. Note the SPS definition of ‘animal’ includes fish and wild fauna and ‘plant’ includes forests and wild flora.

### 1.6 The Biosecurity New Zealand Risk Analysis Framework

To meet the requirements of the Biosecurity Act (1993) for issuing import health standards, the Biosecurity New Zealand framework for undertaking a risk analysis builds on the existing international frameworks (OIE and IPPC), and extends the scope under SPS to include all of the values required by the Biosecurity Act (1993). Table 1 lists the stages of the OIE and IPPC risk analysis frameworks, and provides an overview of the integration of both processes and the titles adopted for the Biosecurity New Zealand risk analysis framework.

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10 Section 22 of the Biosecurity Act 1993
Table 1: Biosecurity New Zealand framework relative to OIE and IPPC frameworks

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<td></td>
<td>2.5 Conclusion of the pest risk assessment stage</td>
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### 1.6.1 Managing a risk analysis

There are four main steps to managing a Biosecurity New Zealand risk analysis project. The first step, *prioritising*, is made necessary by insufficient resources to fully manage all risks. It is completed prior to undertaking a risk analysis project and seeks to identify from a range of projects in the work programme, which risks to manage and to what levels, to make most effective and efficient use of the resources available.
Once a project is begun the second step is to decide on the scope of a risk analysis. There are a number of options to choose from when deciding on the scope of a risk analysis. Each has its own advantages and disadvantages. Market access requests, reviewing existing import health standards, ensuring consistency and resource constraints all influence which option is chosen. A risk analysis may be based on a particular commodity, a category of commodities, a particular organism or disease, or group of organisms or diseases that share common epidemiological characteristics, or one or more forms of conveyance. The analysis may apply to a particular exporting country (bilateral) or a trading block, such as the European Union (multilateral) or, in some cases it may not apply to any particular country.

The third step is to plan the risk analysis project. The overarching purpose of the project plan is to clearly define the roles, responsibilities, processes, and activities which will result in the project producing the deliverables required, on-time, within budget, and to the agreed standard(s). It addresses the strategies, scope, roles, responsibilities, timetable, costs, and risks and issues appropriate to the project's management activities, and identifies the impact of the project on the business.

The fourth and final step is to develop a communication strategy. A communication strategy details how the developing project is reported to stakeholders and decision makers to ensure adequate and appropriate involvement and governance oversight is achieved. Each step of the project is recorded in a check sheet (see Appendix 2) to provide a record of how the project progressed.

### 1.6.2 Undertaking a risk analysis

The risk analysis process is itself divided into four main steps: Hazard Identification, Risk Assessment, Risk Management Options, and Risk Communication and Documentation.

**Hazard identification** is an essential step that must be conducted prior to a risk assessment. To effectively manage the risks associated with pathways or imported risk goods, organisms or diseases which could be introduced into New Zealand that are capable of, or potentially capable of, causing unwanted harm must be identified. In the case of a single hazard, a pest risk analysis, all or many of the potential pathways of entry may be identified.

In the **risk assessment** step the risk analyst evaluates the likelihood and environmental, economic, and human health consequences of the entry, exposure and establishment of a potential hazard within New Zealand. The aim is to identify hazards which present an unacceptable level of risk, for which risk management measures are required. A risk assessment consists of four inter-related steps:
i) Assessment of likelihood of entry
ii) Assessment of likelihood of exposure and establishment
iii) Assessment of consequences
iv) Risk estimation.

The uncertainties and assumptions identified during the preceding stages are also summarised and considered for further research with the aim of reducing the uncertainty or removing the assumption.

Risk management options, in the context of risk analysis, is the process of deciding upon biosecurity measures to effectively manage the risks posed by the hazard(s) associated with the commodity under consideration. Possible options are identified, and the likelihood of the entry, establishment or spread of the hazard is evaluated according to the option(s) that might be applied. An appropriate option or combination of options is then selected. Residual risk remaining after the selected options have been successfully implemented is then estimated and becomes the basis for developing a monitoring protocol that may, for instance, interpret interception data to determine if risk thresholds are being exceeded.

Risk communication is undertaken throughout the life of the risk analysis project in the manner described in the communication strategy developed at the beginning of the project.

Each risk analysis is then documented to facilitate the understanding of a risk analysis, to ensure that the reasons for the conclusions reached and recommendations made are obvious, and to allow for the review of the risk analysis when additional information becomes available.

The main steps of the Biosecurity New Zealand risk analysis framework are summarised in figure 1. A set of process diagrams and short procedural descriptions are also provided in Appendix 3, with links to the procedures included in the following chapters of this handbook.
Figure 1: The Biosecurity New Zealand Risk analysis framework

2. Prioritising Risk Analysis Projects

A risk analysis may be undertaken to:

- support the development or review of import health standards,
- assist in the development of surveillance programmes,
- support incursion responses to new organisms, or
- assist in prioritizing established pests for national management.

Requests for risk analysis projects for completion by the risk analysis group therefore need to be prioritized in a manner that allows consistency and transparency in decision-making.
Prioritisation is made necessary by insufficient resources to fully manage all risks. It seeks to identify, in the context of resource management, which risks to manage and to what levels, to make most effective and efficient use of the resources available. Improved resource allocation can enable the same total level of risk management to be achieved using fewer resources or greater management of risks to be achieved with the same level of resources.

Prioritisation requires:

- identification of the outcomes sought and the (business) risks to their attainment;
- recognition of resource constraints;
- consideration of competing uses of resources;
- willingness to reallocate resources from lower to higher priorities.

To be effective, the formal framework for assessment and prioritisation in allocating resources in risk analysis must be:

- robust – systematic, objective and rational, informed by reliable information and analysis and people with appropriate expertise and experience;
- discriminating – able to differentiate, as useful, between relative levels of priority;
- flexible – to accommodate the range of contexts, inherent uncertainty, inevitable trade-offs between risk and benefit and complexity of biosecurity decision-making;
- consistent – across applications, types of risk and time, such that decisions differ only to the extent that there is valid reason and not due to differences in assessment approach;
- transparent – such that the basis for decisions is explicit, facilitating effective communication and understanding; practical – simple, inexpensive and, for urgent decisions, quick to apply; and
- dynamic – able to accommodate changing risks and values and continuously improving as better practices are developed.

### 2.1 Requests for Risk Analyses

Risk analysis requests may come from Senior Managers (through strategic projects) or Group Managers (Border Standards, Surveillance and Response, Pest Management). As stated above, requests may be for risk analyses to identify appropriate measures for import health standard development, or for risk assessments to support surveillance and response or pest management activities.
2.1.1 Requests for risk analyses to determine measures

These requests will come through the import health standard application prioritization panel in accordance with annual planning cycles and the agreed import health standard development process of Biosecurity New Zealand. The committee will identify which import health standards require further risk analyses and the risk analysis group will do a preliminary scope of these analyses. This scope will include an approximation of the level of resourcing and timeline required to undertake the analysis.

2.1.2 Requests for risk analyses to support surveillance and response or pest management activities

The process for developing and receiving requests for risk analysis work in support surveillance and response or pest management activities has yet to be developed. It is likely this process will be developed in a separate project and integrated into these procedures when completed.

2.1.3 High priority strategic projects requiring risk analysis input

During the annual planning cycle, Senior Managers will identify new high priority projects for Biosecurity New Zealand. Where input or leadership is required from the risk analysis group, these projects will also be prioritized within the work programme.

2.2 Process for Prioritizing Risk Analyses

All requests for risk analyses will be collated from the above sources within the appropriate timeframe of the annual business planning process.

The requests will be assessed by the Group Manager and Team Managers (Risk Analysis) with input from all team members and appropriate members from other business groups.

2.3 Criteria for Prioritizing Risk Analyses
The criteria for assessing priority in allocating resources in risk analysis are:

- technical;
- practicality;
- benefit-cost;
- strategic; and
- acceptability.

The first of these concerns, *technical feasibility*, looks at the suitability and probability of achieving the risk management objective. Factors considered include the likely complexity of task to complete the import health standard and the availability of information to support the identification and development of appropriate measures.

*Practicality* provides for consideration of logistics, resourcing, including current capability (e.g. staff skill set) and the extent to which the ability to manage other risks would be constrained, timing, such as urgency or time awaiting action, opportunities and risks associated with the risk management option, including consideration of risks in deferring or rejecting the risk management option, and past achievements and sunk costs.

*Benefit-cost* is defined broadly as the net impact of the risk management option, most directly the reduction in risk achieved less the resources required. This criterion requires the systematic identification and consideration of the full range of positive and negative effects across all sectors. This is provided in the overall benefit-cost rating. It brings together risk analysis and operational activity and effectiveness in assessing options to manage risks to what New Zealanders value.

Criteria in assessing costs and benefits comprise the scope of effects to be considered. This encompasses the full range of effects across all sectors:

- commercial, including primary production, industry and service sectors;
- environmental, including valued indigenous and introduced species, biological systems and biodiversity;
- social, including personal property and lifestyle;
- human health and well-being;
- Māori cultural and spiritual values; and
- public, in terms of Crown resources.

The above are accorded equal weight, with distributional considerations reflected in the
priority assessment criterion of acceptability. At this stage the scoring attributed to these criteria will be approximate only, given that in many cases a more complete analysis will occur in the risk analysis still to be undertaken.

**Strategic** factors include contribution to or alignment with the goals and key priorities for New Zealand biosecurity and of the government, agency, sector and group and investment for long-term benefits, including development of capability and potential future growth sectors, relative to addressing more immediate needs.

The final criterion of **acceptability** reflects stakeholder interest or concern, responsiveness to the needs of Māori, international interests, including trade (encompassing wider trade implications), environmental and human health, distributional considerations, including the interests of particular groups and the incidence of costs and benefits.

These generic criteria are interpreted differently according to context. Under practicality, for example, timing may reflect urgency in incursion response or time awaiting action for import health standard requests. Assessment within the same framework of criteria does, however, provide a consistent format to facilitate comparison of risk management options.

### 3. Managing a Risk Analysis Project

#### 3.1 Introduction

A risk analysis may be either undertaken by either MAF or an external consultant managed by MAF. Regardless of who undertakes the analysis it is essential to ensure that requirements for consultation and scientific rigour are met by establishing a management framework that is appropriate to the circumstances.

Risk analyses which cover:

- a range of commodities;
- a single commodity derived from a number of countries or regions;

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shall be managed through a project. The Project Manager will be accountable for delivering the project to the agreed plan either solely, through the use of the technical resources available within MAF, or in some part through the use of external consultant(s) who may undertake aspects of the risk analysis.

For details on the roles, responsibilities and processes for managing projects for the Ministry of Agriculture and Forestry (MAF) and Biosecurity New Zealand, please refer to the MAF Project Methodology available at the following address on the MAF intranet (http://intranet.maf.govt.nz/intra/projects/methodology/).

The follow section will provide guidance on the application of project management to the development of risk analyses.

### 3.2 Project Management for Risk Analysis

Project management is the application of knowledge, skills, tools and techniques to project activities to meet the project requirements; that is the art and science of how to go about delivering projects.

Project management provides the means to respond to and manage initiatives that cannot be addressed as readily by the organisation’s normal operations (business as usual). Since projects are unique and temporary, project management provides tools to design, develop, and deliver the project’s products (deliverables) while providing a defined framework for decision making, performance monitoring and risk minimisation. In simple terms, project management sets the boundaries and rules for the particular project to be managed and monitored against.

#### 3.2.1 Project Governance

Project Governance is defined as the organisation’s set of structures, systems and processes around projects that assure the effective selection and delivery of the projects.
Project governance, like any other management discipline needs to have basic principles to live by in order to be effective.

The organisation’s decision-makers govern projects through three main tasks:

- **Evaluate** the project for strategic importance, value and to establish priority.
- **Decide** if the planning is satisfactory and therefore whether to proceed.
- **Monitor** conformance to policies and performance against what has been planned and intervene as and where appropriate.

There are three decision making roles in a project: Business Owner, Project Sponsor and Project Manager.

### 3.2.2 The Project Manager

In the context of risk analysis, the Project Manager, along with their normal project management responsibilities, is also accountable for:

- inter-departmental liaison;
- recommending publication of a risk analysis for stakeholder consultation;
- recommending publication of a review of stakeholder submissions;
- publishing the final version of the risk analysis once peer review is completed and approval is granted by the Sponsor;
- analysing and documenting critiques arising from stakeholder submissions and recommending modifications to the risk analysis;
- providing feedback and publishing a review of stakeholder submissions.

### 3.2.3 Establishing a Project Team

The project team is made up of people who actively work on the project, at some stage, during the lifetime of the project. They are a group of individuals with appropriate and complementary professional, technical or specialist skills who, under the direction of the Project Manager, are responsible for carrying out the work detailed in the project plan. The size of the team will depend on the resources available and the nature of the work being undertaken. Individuals from outside Biosecurity New Zealand may be included in the project team where appropriate. For many of the risk analyses undertaken to support the development of an import health or operational standard it is expected that a representative from the Biosecurity Standards Group will be on the project team.
3.2.4 An External Risk Analysis

Where an external consultant is commissioned by Biosecurity New Zealand, the work undertaken by the consultant will occur within a project managed by a Biosecurity New Zealand Project Manager. The Project Manager will be accountable for the oversight for the work of the consultant. Where the consultant has responsibilities in the development of a risk analysis (consultants may also be employed to draft a risk analysis), each party has the following responsibilities:

3.2.4.1 Project Manager

In addition to the responsibilities outlined in section 3.2.2 the Project Manager will be accountable for:

- the consultant having an appropriate understanding of the scope of their work on the project;
- establishing a risk communication strategy, including the identification of potential stakeholders, in collaboration with the consultant;
- liaising with the consultant to identify potential project risks;
- ensuring adequate technical oversight of the consultant’s activities in developing the deliverables;
- commissioning a peer review of a draft risk analysis developed by the consultant;
- a review of the consultant’s analysis of peer review critiques;
- publishing the final version of the risk analysis once peer review is completed and approval is granted by the Sponsor. A covering letter from the Sponsor must accompany the risk analysis stating that it has been subjected to peer review process commissioned by MAF and that MAF is satisfied with the standard of the analysis and its recommendations.

3.2.4.2 External Consultant

The external consultant will be accountable for:

- liaising with the Project Manager or delegate to establish the scope of the risk analysis;
- liaising with the Project Manager or delegate to identify potential project risks;
- carrying out the risk analysis according to the requirements stated in these procedures;
- submitting the risk analysis to a peer review process commissioned by the Project Manager;
3.3 Summary of the Decision Making Framework

The decision making framework for a risk analysis project details who and how decisions will be made during the project. The “how” part of the decision making framework will be developed through other business processes, but the “who” question can be clarified in these procedures for risk analysis projects.

For risk analysis projects there are four decision makers: The Project Manager; the Project Sponsor; the Business Owner; and the Director Pre-clearance (or designate). The accountabilities of these decision makers can be summarised as follows:

<table>
<thead>
<tr>
<th>Decision Maker</th>
<th>Accountability</th>
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<tbody>
<tr>
<td>Director Pre-Clearance (or designate)</td>
<td>Approving the risk analysis for consultation and final dissemination.</td>
</tr>
<tr>
<td>Business Owner</td>
<td>Approving the project concept and may hold any of the accountabilities normally delegated to the sponsor.</td>
</tr>
<tr>
<td>Project Sponsor</td>
<td>Approving project deliverables including the recommendations to the Director Pre-Clearance (or designate).</td>
</tr>
<tr>
<td>Project Manager</td>
<td>Project Management decisions related to ensuring the project is delivered to the project plan.</td>
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The decision-making roles must be allocated and agreed prior to the project commencing, but may be altered during the project if certain aspects of the project such as scope or profile change. It is possible for the Director Pre-Clearance (or designate) to also be the Business Owner.
3.4 Developing a Communication Strategy

It is essential to establish a communication strategy from the start of a risk analysis to ensure from the outset that stakeholders are provided with an opportunity to provide comment and the appropriate governance systems are in place. The project reporting requirements to ensure adequate governance are discussed further in the MAF Project Methodology.

When dealing with stakeholders it must be recognised that risk communication is an interactive and iterative process involving a two-way dialogue. As a result all legitimate concerns raised are to be considered and timely feedback provided. Since New Zealand is a member of the WTO, non-disease or pest associated costs and/or benefits, such as the financial impact of an imported commodity on a domestic industry as a result of competition, do not constitute legitimate concerns. However, concerns relating to the technical details of the risk analysis including its scope, the list of hazards identified, the data, information, assumptions, references and expert opinion are all legitimate. To ensure that a meaningful dialogue is established, all parties should acknowledge that they have an obligation to provide a reasoned argument that is relevant to the analysis and a right to propose a contrary view.

The risk communication strategy should also identify various opportunities with which to communicate with stakeholders, for example, MAF publications such as Biosecurity, MAF’s website, direct mail-outs and public notices in newspapers. It must identify potential stakeholders and aim to be inclusive rather than exclusive.

Once a decision is reached not all stakeholders may agree with it. However, by involving them from the outset, taking their concerns seriously and addressing them appropriately, they may have a greater understanding of why a particular decision has been reached.

3.4.1 Expert peer review

Peer review is a fundamental component of a risk analysis to ensure the analysis is based on the most up to date and credible information available. Each analysis must be submitted to a peer review process involving recognised and relevant experts from New Zealand or overseas. Initially, the analysis may be reviewed by appropriate staff within those government departments with applicable biosecurity responsibilities. Following internal review, external reviewers are to be commissioned by the Project Manager and given specific terms of reference to provide a detailed critique. The Project Manager is accountable for ensuring each critique is reviewed and where appropriate, incorporated into the analysis. If suggestions arising from the critique are not adopted the rationale must
be fully explained and documented.

The Project Manager must also ensure that each issue raised by a reviewer is individually and separately documented with an appropriate response. Similar issues raised by others must not be amalgamated into a summary of common themes, although identical comments may not need repeating. Once peer review has been completed the Project Manager must ensure the conclusions are discussed with the Project Sponsor and/or Business Owner before the draft risk analysis is revised and published. Using the criteria listed in table 3.1, the Project Manager selects the number and characteristics of the external reviewers.

Table 3.1: Criteria for Selecting Peer Reviewers

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Outcome (minimum)</th>
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<tr>
<td>The risk analysis dealt with one or more types of organism that have a significant potential impact on an economic, environmental and/or health issue.</td>
<td>1 reviewer per organism type, with each respective type of organism and their consequences.</td>
</tr>
<tr>
<td>There were no organisms of potential significant consequence identified within the scope of the risk analysis project, and a suitably skilled person can be identified who has had no involvement in the development of the project to-date.</td>
<td>MAF reviewer possible</td>
</tr>
<tr>
<td>There were organisms of potential significant consequence identified within the scope of the risk analysis project.</td>
<td>Reviewer external to MAF only</td>
</tr>
<tr>
<td>There were organisms of high consequence identified within the scope of the risk analysis project, for which international expertise that is independent of the outcome of the analysis is not known within New Zealand.</td>
<td>International reviewer</td>
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</table>

Requirements for the completion of an external peer review include:

- Peer reviewers will be required to confidentially evaluate the technical merits of the document;
- Reviews shall be completed within the time specified by the Project Manager;
Peer reviewers may consult with non-MAF experts providing the document does not contain confidential business information and the Project Manager agrees to it;

Peer reviewers should provide a list of any considerations that were not adequately taken into account in the document;

Peer reviewers should not reveal any of the content or recommendations of the review to other parties except as necessary to conduct an objective review as addressed above.

Peer review may involve a significant time commitment to ensure a risk analysis, particularly if large and/or complex, is properly reviewed. Peer reviewers are chosen on the basis of their status as acknowledged authorities in their fields.

The following terms of reference should be provided to each peer reviewer:

i) Is the logic of the process clear to you from your reading of the analysis? That is, can you readily follow the steps from hazard identification, through the risk assessment to formulation of appropriate measures?

ii) Does the document make clear what are facts and what are assumptions?

iii) Has the literature been cited accurately? Have any important publications been overlooked?

iv) Are the references cited appropriate? That is, are the critical epidemiological observations based on secondary sources where it would have been preferable to consult primary sources?

v) In those sections where risks have been assessed quantitatively:
   • Do you understand precisely what has been modelled?
   • Have the scenario being modelled, and the modelling approach, been adequately described in the written text?
   • Is the scenario being modelled plausible, logical and appropriate?
   • Would every iteration of the model give a biologically plausible output?
   • Is the structure of the model appropriate?
   • Are the data used appropriate?
   • Is the model mathematically sound and are the formulae used appropriate?
   • Are the distributions used appropriate for the data or information being modelled?
   • Are you aware of any data or information that have been overlooked but which might be appropriate in the quantitative assessment?
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The following process should be followed for the expert peer review of the draft risk analysis.

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1) Commissioning a review

- Determine level of internal and external review required.
- Draft terms of reference for reviewers. This could include asking reviewers to review a specific section or the entire document. The template reviewer letter should provide an adequate terms of reference (ToR) for most cases but should be amended as required.
- For external reviewers the ToR should include a mechanism to control the cost of the review e.g. requiring authorisation before exceeding a dollar value or time spent on the review. If the cost of a particular review is likely to exceed $15,000 then the use of a more formal contract through the Biosecurity New Zealand contract team should be considered. Note however that this may delay the start of the review by several weeks.
- Selecting reviewers. Reviewers should be able to carry out the review within a suitable timeframe. External reviewers should be acknowledged authorities in their field. Previous experience in carrying out review for MAF would be an advantage. Creditability of reviewer with stakeholders may also be considered.
- Once reviewers have been selected send them the risk analysis, ToR and fill in the checklist with relevant details of reviewers.

2) Analysis of reviewers comments

- Consider the reviewers comments and decide how to address them. All issues raised by reviewers must be addressed either by adopting the reviewers comments or if rejecting them by a fully explained and documented rationale.
- Amend the risk analysis accordingly.

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3.4.2 Consulting on a risk analysis

Once a risk analysis has been peer reviewed and the critiques addressed it ceases to be a draft. Following a recommendation from the Project Manager and approval of the recommendation by the Sponsor, the risk analysis is formally approved by the Director Pre-Clearance (or designate) and becomes an official risk analysis, which is a statement of MAF’s expert opinion. Once approved the risk analysis is then published and released for public consultation. The analysis must be made available to potential stakeholders, and its availability should be announced through MAF publications such as Biosecurity, MAF’s web page, direct mail-outs and public notice advertisements in newspapers, etc. The period for public consultation is usually 6 weeks from the date of publication of the risk analysis.

All submissions received from stakeholders must be analysed and compiled into a review of submissions. As with the comments from peer reviewers, similar issues raised by others...
must not be amalgamated into a summary of common themes, although identical comments may not need repeating. The Project Manager is accountable for the preparation of a document containing the results of the review and recommended modifications to the risk analysis.

### 3.4.2.1 The Consultation Process

The following is a process for undertaking consultation on a risk analysis:

1. Commissioning the consultation
   - Release the risk analysis for consultation by placing it on the consultation page on the MAF website, placing a notice in Biosecurity magazine, and completing a direct mail out to potentially interested stakeholders. Other methods can be employed if the nature of the risk analysis warrants it, for example a risk analysis for cats and dogs has a wide public audience as a result notices could also sent to vet practices for their notice boards. The risk analysis should remain on the MAF website until the review of submissions has been on the MAF website for six weeks after which both documents are moved to the Risk Analysis section of the website.
   - The consultation period should be for a period of 6 weeks.
   - Key pieces of information to include in any notice are; in what context the analysis has been undertaken, where the analysis can be obtained, when submissions close, and where submissions should be sent.
   - All submissions should be acknowledged in writing or by e-mail.

2. Amend risk analysis or develop bridging document as required
   - Review the submissions and identify the issues raised.
   - Each issue raised must be addressed, this does not mean each issue must be accepted, but if rejected then a clear explanation as to why it was rejected is required and must be documented. The escalation criteria described in 3.4.4 should be used to identify issues to be discussed with the Project Sponsor.
   - Once all submissions have been analysed a review of submission document is produced.
   - If any changes to the risk analysis are required, either the risk analysis is amended and re-issued with the changes included or a bridging document is developed which details the changes required to the risk analysis outcomes.

### 3.4.3 Announcing the outcome of the risk analysis process

Once all stakeholder submissions have been analysed, a document containing the results of the review and recommended modifications to the risk analysis should be prepared. The Project Manager must ensure these results and recommendations are discussed with the Sponsor and/or the Business Owner. Following approval of the recommendations by the Sponsor and final approval of the either amended risk analysis or the risk analysis bridging document by the Director Pre-Clearance (or designate), the final risk analysis document and
The final outcome from the risk analysis process is three main documents:

i) A risk analysis for consultation;
ii) A review of stakeholder submissions and recommendations on revisions to the risk analysis;
iii) Either; a final risk analysis, incorporating the revisions recommended by the review of stakeholder submissions; or a bridging document clearly showing the required changes to the outcomes of the risk analysis. If a bridging document is developed the original risk analysis must have a link included at the beginning of the document providing a clear link between the risk analysis and the bridging document.

3.4.3.1 Notification process

The following is a process for notifying the outcome of the risk analysis process:

**Notifying the outcome of the risk analysis process**

1. Send a copy of the review of submissions to all those that: made submissions; expressed interested in receiving the review of submissions; and affected government departments. A notice advising the availability of the review of submissions should be put in Biosecurity Magazine (see notice template). A pdf of the risk analysis and the review of submissions should be put on the risk analysis section of the MAF website were they will remain indefinitely. Depending of the nature of the risk analysis other notification steps may also be taken. The project communications strategy should provide guidance on this.

2. Send a copy of the review to the Biosecurity Standards Group of Biosecurity New Zealand.

3. Any issue raised subsequent to the release of the review needs to be assessed as to whether it significantly challenges the results of the risk analysis. A simple acknowledgement of their issue will suffice for those that do not significantly challenge the results of the risk analysis. For those that do, the Project Manager should bring the issue to the attention of the Project Sponsor and decide on a course of action to address the issue.
3.4.4 Escalation Criteria

A communication strategy must also contain a set of criteria to aid in identifying issues that require escalation to more senior staff to inform or to action to ensure appropriate resolution.

The details of the project escalation criteria will be specific to any given project, but the following principles should be used as the basic framework:

**Issues to be escalated for information:**

- Domestic or international stakeholder(s) accept findings but indicate they have issues with process.
- Domestic stakeholder(s) indicate they are considering raising issues with more senior MAF staff (up to EMT level).
- Domestic stakeholder(s) indicate they are considering raising issues with other Government organisations.

**Issues to be escalated for action:**

- Domestic stakeholder(s) indicate they are considering taking legal action against findings.
- Domestic stakeholder(s) indicate they are considering raising issues with senior MAF staff (above EMT level) or Government Ministers.

The degree of urgency in reporting the various types of issues and the form in which they are to be reported will either be specified as part of the project plan (if they are project management issues) or agreed with the Sponsor in the communication strategy.

3.5 Developing a Project Plan

The overarching purpose of the project plan is to ensure that the project is aligned for success, clearly defining the roles, responsibilities, processes, and activities which will result in the project producing the deliverables required, on-time, within budget, and to the agreed standard(s). It addresses the strategies, scope, roles, responsibilities, timetable, costs, and risks and issues appropriate to the project’s management activities, and identifies the impact of the project on the business.
The following sections provide guidance on the delivery of aspects of the project plan for the purposes of completing risk analyses or organism impact assessments. All other required aspects of project planning should be completed as required and in compliance with existing MAF and Biosecurity New Zealand policies and procedures.

### 3.5.1 Scoping a Risk Analysis

There are a number of options to choose from when deciding on the scope of a risk analysis. Each has its own advantages and disadvantages. Market access requests, reviewing existing import health standards, ensuring consistency and resource constraints all influence which option is chosen. A risk analysis may be based on a particular commodity, a category of commodities, a particular organism or disease, or group of organisms or diseases that share common epidemiological characteristics, or one or more forms of conveyance. The analysis may apply to a particular exporting country (bilateral) or a trading block, such as the European Union (multilateral) or, in some cases it may not apply to any particular country, in which case it is referred to as a *generic* risk analysis. Regardless of which option is chosen it is important to define the scope of the analysis and document the rationale for choosing a particular one.

The appropriate scientific name should be used when reference is made to an organism or disease agent. Where it is relevant, the nature, source(s), intended use(s) and the likely annual quantity of trade of the commodity should be detailed. A description of the relevant methods of production, manufacturing or processing normally applied, such as cooking, curing, irradiation, filtration and tests for sterility or freedom from contamination, should be included as well as any quality assurance programs, such as HACCP, and how they are verified. While an accurate estimate of the anticipated quantity of trade is desirable, it may not be readily available, particularly where such trade is new. It is important to appreciate that a commodity definition or description does not, in itself, constitute a sanitary or phytosanitary measure. It merely represents the starting point for a risk analysis.

Some commodities could contain organisms that, while not affecting animal or plant health, may have an effect on people, the New Zealand environment or the New Zealand economy. Examples include weed seeds trapped in the commodity or passed in and animal’s faeces, and soil contaminated with fungal spores on shoes or containers. If the commodity under consideration is likely to contain such organisms, it is essential that this is noted in the scope and that the appropriate expertise is either appointed to the Project Team or made available to provide advice to the Project Team.
Commodities imported into a country are usually packed into bags, or enclosed into wrapping or boxing in their country of origin, and are loaded as baggage, bulk materials, or in containers in or onto road vehicles, sea vessels or aeroplanes for transport. Packaging material (wooden (dunnage) and non-wooden) is often used to support the goods during transport. All such packaging should be noted in the description of the pathway of entry of the commodity, and justification provided for its inclusion or exclusion from the scope.

The pathway or pathways on entry of the commodities or organisms into New Zealand should also be described in detail. Commodities and organisms can arrive in New Zealand by sea or by air carried naturally by wind or sea currents, by sea-going vessels or by aircraft. When carried by aircraft or by sea-going vessels, commodities may enter New Zealand under the categories listed in Table 3.1.

**Table 3.1: Categories of modes of entry for commodities**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or in people</td>
<td>Commodities might be carried in or on a person, including the clothing they are wearing. The Biosecurity Act does not directly encompass people themselves as vehicles for the introduction of unwanted organisms.</td>
</tr>
<tr>
<td>Personal baggage (accompanied baggage)</td>
<td>This is baggage accompanying a travelling individual and may contain commodities. It includes carry-on and checked baggage. Note that bags themselves are considered to be commodities and may need to be assessed as risk goods.</td>
</tr>
<tr>
<td>Personal effects</td>
<td>These are unaccompanied personal or household goods. They are usually carried in containers but are considered separately from other containerised goods because of the way their inspection is handled.</td>
</tr>
<tr>
<td>Vessels</td>
<td>Ships, yachts, and aircraft may all themselves either act as vectors for unwanted organisms or contain food, dunnage or personal affects that, if removed from the vessel, could be considered a commodity.</td>
</tr>
<tr>
<td>Air courier cargo</td>
<td>This is courier mail and packages arriving by air. Both wrapping and contents may need to be assessed as risk goods. Air courier cargo is usually carried in containers but is considered separately from other containerised goods because of the way its inspection is handled.</td>
</tr>
<tr>
<td>Mail</td>
<td>This is international mail. Both packaging and contents may need</td>
</tr>
</tbody>
</table>
to be assessed as risk goods. Mail is usually carried in containers but is considered separately from other containerised goods because of the way its inspection is handled.

<table>
<thead>
<tr>
<th>Container cargo</th>
<th>These are goods that are packed into containers for transport (excluding mail, air courier cargo and personal effects as above). The contents, packaging, and the containers themselves may need to be assessed as risk goods.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk cargo</td>
<td>These are goods transported in bulk form during transit (excluding mail, air courier cargo and personal effects as above).</td>
</tr>
</tbody>
</table>

The following is a checklist for scoping a risk analysis:

A checklist for scoping a risk analysis

1) Use scientific names when reference is made to an organism or disease agent. e.g. sheep (*Ovis aries*), cattle (*Bos taurus* or *Bos indicus*), Nile Perch (*Lates niloticus*), Newcastle disease virus (Family *Paramyxoviridae* genus *Paramyxovirus* Avian PMV 1), Radiata pines (*Pinus radiata*), Limes (*Citrus latifolia*)

2) Describe the nature, source(s) and intended use(s) of the commodity or organism where relevant. e.g. frozen chicken (*Gallus gallus*) meat and chicken meat products from the USA for human consumption, live viral vaccines for administration by injection, Lychee (*Litchi chinensis*) fresh fruit from Taiwan for consumption, used cars from Japan.

3) Describe the relevant methods of production, manufacturing, processing or testing that are normally applied. e.g. cooking, curing, irradiation, filtration, tests for sterility and freedom from contamination of biological products

4) Describe any quality assurance programs that may apply and how they are verified. e.g. production of vaccines or other biologicals, HACCP programs for the production of chicken meat

5) Describe the pathway or pathways being considered for entry of the commodity or organism into New Zealand.

6) Estimate the likely annual volume of trade (may not be readily available).

Some examples of appropriate titles for a risk analysis include:
Bilateral risk analysis

- Import risk analysis: fresh or frozen sheep semen (*Ovis aries*) imported from Australia.
- Import risk analysis: Lychee (*Litchi chinensis*) fresh fruit for consumption from Taiwan.

Multilateral risk analysis

- Import risk analysis: live cattle (*Bos taurus* or *Bos indicus* or crossbred animals derived from these species) imported from the European Union
- Import risk analysis: frozen Nile Perch (*Lates niloticus*) skinless, boneless fillets imported from Uganda, Kenya or Tanzania for human consumption.
- Import risk analysis: Polynesian plum (*Spondias dulcis*) fresh fruit for consumption from Fiji, Cook Islands and Samoa.

Generic risk analysis

- Import risk analysis: Foot and mouth disease (Family Picorniviridae, genus Aphthovirus, Foot-and-mouth disease virus A, Asia 1, C, O, SAT 1, SAT 2, SAT 3)
- Import risk analysis: Live viral vaccines for administration by injection
- Import risk analysis: Sera for administration to animals
- Import risk analysis: Diagnostic agents of animal origin for use in a transitional facility
- Import risk analysis: Wood packaging material from all countries
- Import risk analysis: Used vehicles from all countries
- Import risk analysis: *Cordyline* and *Dracaena* fresh cut foliage from all countries

3.5.2 Choosing a qualitative or quantitative approach

No single method of import risk assessment has proven applicable in all situations, and different methods may be appropriate in different circumstances. A qualitative risk assessment is essentially a reasoned and logical discussion of the relevant commodity factors and epidemiology of a hazard where the likelihood of its entry and exposure and the magnitude of its consequences are expressed using non-numerical terms such as high, negligible or non-negligible. It is suitable for the majority of risk assessments and is, in fact, the most common type of assessment undertaken to support routine decision-making. In some circumstances it may be desirable to undertake a quantitative risk assessment, for example, to gain further insights into a particular problem, to identify critical steps or to compare sanitary measures. Quantification involves developing a mathematical model to link various aspects of the epidemiology of an organism or disease, which are expressed numerically. The results, which are also expressed numerically, invariably present significant challenges in interpretation and communication.

Regardless of which method is adopted it is important to appreciate that a risk assessment
NEW ZEALAND

inevitably includes a degree of subjectivity. The personal opinions and perceptions of the analyst, experts and decision-makers are inescapable realities. Although a quantitative assessment involves numbers, it is not necessarily more objective, nor are the results necessarily more “precise” than a qualitative assessment. Choosing an appropriate model structure, which pathways to include or exclude, the level of aggregation or dis-aggregation, the actual values used for each input variable and the type of distribution applied to them all involve a degree of subjectivity. In addition, because data are lacking, some models incorporate expert opinion, which by its very nature is inevitably subjective.

Since both qualitative and quantitative assessments are inevitably subjective, how can a reasonable level of objectivity be attained? The solution lies, not in the method chosen, but in ensuring that the assessment is transparent. All the information, data, assumptions, uncertainties, methods and results must be comprehensively documented and the discussion and conclusions supported by a reasoned and logical discussion. The assessment should be fully referenced and subjected to peer-review.

3.5.2.1 Semi-quantitative methods

As discussed in the preceding section, all risk assessments inevitably include a degree of subjectivity. Semi-quantitative methods appear to be favoured by those who are concerned about subjectivity. Because many people find numbers seductive and reassuring, some analysts use so-called semi-quantitative methods in the mistaken view that they are somehow more “objective” than strictly qualitative techniques. However, a number of significant problems arise from adopting a semi-quantitative approach in an import risk assessment. It is sometimes employed as a means of combining various qualitative estimates, by assigning numbers to them, to produce a summary measure or to prioritise risks. The numbers may be in the form of probability ranges or scores, which may be weighted before being combined by addition, multiplication etc. The numbers, ranges, weights and methods of combination chosen are usually quite arbitrary and as a result, lack transparency. It is impossible to assign precise numbers unless a quantitative assessment has already been carried out. Semi-quantitative assessments often give a misleading impression of objectivity and precision and may not adequately reflect relativities, which can lead to inconsistent outcomes. Assigning numbers to subjective estimates does not result in a more objective assessment, particularly when the numbers chosen and their method of combination is arbitrary.

These issues may not be such a problem where the aim is to prioritise risks in a non-contentious environment so that decisions can be made, for example, on where to channel scarce resources. However, where the goal is to obtain a realistic estimate of risk, particularly in a contentious environment, such as import risk analysis, semi-quantitative
methods offer no advantages over a well researched, transparent, peer reviewed qualitative assessment.

Essentially, semi-quantitative methods introduce an unnecessary level of complexity by apparently imposing a quantitative framework on a qualitative assessment. The best antidote for “too much subjectivity” is transparency, of which a vital ingredient is peer review. An adequately peer-reviewed risk assessment will minimise the impact of subjectivity as it will reflect the collective knowledge and wisdom of recognised specialists.

3.5.2.2 Dealing with incomplete information (uncertainty)

Incomplete information is often referred to as uncertainty in the context of a risk analysis. However, the way in which uncertainty has been described by risk analysts from a range of disciplines has led to a degree of confusion. To understand what is meant it is important to appreciate that risk analysis is essentially a tool aimed at helping to make an informed decision by attempting to predict the future. For example, we might want to predict the height of a person chosen at random. We know from our own observations that there is a great deal of natural variation between individuals. Such variability is an inescapable reality. While we might have a good “feel” for its range and what an average might be, it is only by measuring several people that we can begin to make some accurate predictions. As more data are collected, more knowledge is acquired, and we can describe the variation in people’s heights with increasing certainty, enabling us to be increasingly confident of our predictions. If we measured everybody in the population we would have a perfect understanding of the average height and how much variation exists. Obviously, this is impractical and we need to achieve a balance between acquiring perfect knowledge and obtaining reasonable estimates upon which we can base our predictions with a reasonable level of confidence. Uncertainty then may be thought of as a measure of the incompleteness of one’s knowledge or information about an unknown quantity. It is important to remember that even with perfect knowledge, variability still exists.

These ideas can be extended to import risk analysis where, for example, we want to predict the likelihood of an outbreak of foot and mouth disease (FMD) following the importation of goats’ cheese from country X. For an outbreak to occur a complex chain of events needs to take place leading from:

i) an outbreak of FMD in country X that results in at least one infected goat shedding FMD virus in its milk,

ii) the virus surviving pasteurisation, the cheese manufacturing process, storage and transportation,

iii) a susceptible animal ingesting discarded cheese in the importing country, becoming
infected and passing it on to other animals.

There may be some very good information on the survival of FMD in pasteurised milk, some limited information on the occurrence of FMD in country X and virtually no information on the likelihood of susceptible animals ingesting cheese scraps in the importing country. A prediction in these circumstances will be based on information ranging from poor to excellent. As a result we could conclude that there is significant uncertainty in the estimates for the occurrence of FMD in country X and the exposure of susceptible animals in the importing country. The impact of these uncertainties on the overall estimate of risk needs to be carefully considered. For instance, the impact is likely to be insignificant if pasteurisation is predicted to effectively kill FMD virus. On the other hand, if pasteurisation cannot be relied upon because FMD virus is either heat tolerant or there is significant variability in its effectiveness, the impact of these uncertainties becomes much more important.

Where there is significant uncertainty in the estimated risk, a precautionary approach to managing risk may be adopted. However, the measures selected must nevertheless be based on a risk assessment that takes account of the available scientific information. In these circumstances the measures should be reviewed as soon as additional information becomes available and be consistent with other measures where equivalent uncertainties exist. It is not acceptable to simply conclude that, because there is significant uncertainty, measures will be selected on the basis of a precautionary approach. The rationale for selecting measures must be made apparent.

Biological pathways considered in the entry and exposure assessments must be ascertainable. Since it is very difficult or perhaps impossible to prove that a particular pathway does not exist, there will always be a degree of uncertainty. In some cases a pathway may be hypothetical rather than ascertainable. It is not appropriate to consider such pathways in a risk assessment.

3.5.3 Developing Risk Criteria

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12 Article 5.7 of the SPS Agreement states that “a Member may provisionally adopt sanitary .... measures” and that “Members shall seek to obtain additional information .... within a reasonable period of time.” Since the plural noun “Members” is used in reference to seeking additional information a co-operative arrangement is implied between the importing and exporting country. That is the onus is not just on the importing country to seek additional information.
Risk Criteria is defined in the Australia/New Zealand Standard AS/NZS 4360:2004 as “threshold or other decision rule by which the significance of risk is assessed to determine whether risk treatment actions are recommended”. This standard goes on to say:

“Decisions concerning whether risk treatment is required may be based on operational, technical, financial, legal, social, humanitarian or other criteria. These often depend on an organisation’s internal policies, goals and objectives and the interests of stakeholders. Criteria may be affected by the perceptions of stakeholders and by legal or regulatory requirements. It is important that appropriate criteria be determined at the outset.”

Within the Biosecurity New Zealand risk analysis framework for determining appropriate measures (Chapter 4), risk attributes are considered as being either “negligible” or “non-negligible”. Where possible descriptors should be used to describe the comparative levels of the critical risk attributes to aid in the communication of the nature of the risk to the decision maker and stakeholders. Apart from the exception provided below, the risk criteria to be used are provided in table 3.2.

Table 3.2: Descriptors for critical attributes of risk

<table>
<thead>
<tr>
<th>Risk Attributes</th>
<th>Risk Descriptors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligible</td>
<td>Not worth considering; insignificant</td>
</tr>
<tr>
<td>Non-negligible</td>
<td>Worth considering; significant</td>
</tr>
<tr>
<td>Risk Descriptors</td>
<td></td>
</tr>
<tr>
<td>Very Low</td>
<td>Close to insignificant</td>
</tr>
<tr>
<td>Low</td>
<td>Less than average, coming below the normal level</td>
</tr>
<tr>
<td>Medium</td>
<td>Around the normal or average level</td>
</tr>
<tr>
<td>High</td>
<td>Extending above the normal or average level</td>
</tr>
<tr>
<td>Very High</td>
<td>Well above the normal or average level</td>
</tr>
</tbody>
</table>

The exception occurs when assessing the level of consequences of a potential hazard in risk assessment (Section 4.3).
To inform processes external to risk assessment, namely prioritising processes in measures review and the development of response plans, hazards that could potentially result in a consequence of sufficient magnitude to warrant consideration for measure review or the development of response plans need to be identified. These hazards are deemed high consequence hazards if they meet the following criteria:

A high consequence hazard is considered likely to cause an unwanted impact to people, the New Zealand environment, or the New Zealand economy of sufficient magnitude that should it become established in New Zealand either eradication would be attempted or other active response options (e.g., contain/exclude or control) would be implemented if eradication was deemed inappropriate.

### 3.5.4 Ensuring Adequate Project Transparency

To facilitate the understanding of a risk analysis and to ensure that the reasons for the conclusions reached and recommendations made are obvious, it is essential that it is transparent. The analysis must be well documented and supported with references to the scientific literature and other sources of information, including expert opinion. It must provide a reasoned and logical discussion that supports the conclusions and recommendations. There must be comprehensive documentation of all data, information, assumptions, methods, results, and uncertainties. Transparency ensures:

- fairness and rationality
- consistency in decision making
- ease of understanding by all the interested parties
- assumptions are documented
- uncertainties are dealt with appropriately
- reasons for conclusions and recommendations are obvious
- stakeholders are provided with clear reasons for the imposition of measures.

### Ensuring the analysis is relevant and as simple as possible

The New Zealand environment includes ecosystems and their constituent parts, including people and their communities; and all natural and physical resources; and amenity values; and the aesthetic, cultural, economic, and social conditions that affect or are affected by any matter referred to above.
To facilitate risk communication it is essential to ensure that the risk analysis focuses on information directly relevant to the logic chain of the analysis. Each organism or disease should be discussed only to the extent necessary to enable the reader to gain an appreciation of likelihood of entry, establishment or spread of hazard(s) and of their associated potential consequences. If, for example, it is concluded that the likelihood of a hazard entering New Zealand is negligible, there is no need to undertake an exposure, establishment and consequence assessment and explore risk management options. It is not necessary to offer detailed description of clinical syndromes, pathology, treatments etc., unless these have a direct bearing on the likelihood of detecting infested commodities or organisms, or managing disease or organism risks.

For some commodities, as soon as a risk assessment is completed for a particular hazard and measure(s) proposed, for example some form of processing such as cooking or kiln drying, there may be no need to undertake a full risk assessment for the other potential hazards. In these circumstances an assessment of the efficacy of the proposed measure(s) on the other potential hazards might be all that is required.

3.6 Monitoring and Review of Risk Analyses

The risk analysis should be based on the best available information that is in accord with current scientific thinking and be amendable to updating when additional information becomes available. As researchers develop improved diagnostic tests, or formulate new insights into the epidemiology of specific pests or diseases, conclusions of risk assessments, or recommendations for risk management may no longer be completely appropriate, and should be revised. As risk is always proportional to the volume of commodity traded, risk assessments may need to be revised if the volume of trade is greater or less than projected in the original assessment. The same scientific rigour that applied to the original risk analysis should apply to its revision.

Under the International Plant Protection Convention the principle of “modification” states: “As conditions change, and as new facts become available, phytosanitary measures shall be modified promptly, either by inclusion of prohibitions, restrictions or requirements necessary for their success, or by removal of those found to be unnecessary”\textsuperscript{14}. Thus, the implementation of particular measures should not be considered to be permanent. After

\textsuperscript{14} ISPM Pub. No. 1: Principles of plant quarantine as related to international trade.
application, the success of the measures in achieving their aim should be determined by monitoring during use. This is often achieved by inspection of the commodity on arrival, noting any interceptions or any entries of the hazard organisms to the risk analysis area or any related hazard events within the risk analysis area. The information supporting the risk analysis should be periodically reviewed to ensure that any new information that becomes available does not invalidate the decision(s) taken.

Sources of such information should be monitored and new hazard/pathway associations recorded as they occur. The World Organisation for Animal Health publishes regular reports of changes in international disease status, as do many National Plant Phytosanitary Organisations for plant pests under the International Plant Protection Convention, and this information should be used to revise risk analyses, as appropriate. Other information sources include: internal database systems; various domestic or international email notification services (e.g. EPPO Reporting service, USDA pest alert); and appropriate scientific journals. New hazard associations or organism distributions, or changes in pathway characteristics (e.g. volume) should be assessed for potential risk against current measures to ensure existing measures are appropriate.

3.7 Project Close-Out Reporting

The main purpose of the project close-out report is to state the reason why the project is being closed and report on the performance against the various deliverables of the project. This is usually because the outputs have been delivered, the closing date has been reached and/or the budget has been expended, but may also be due to a change in policy or priorities, a loss of funding, or a deadline has been reached.

It is also an opportunity to describe the high- and low- lights of the project, any innovations used or developed by the project, and any lessons learned that may be of value to other projects with regard to people, process and deliverables.

The close-out report should also make a number of recommendations. One of the recommendations should be for the Sponsor or Business Owner (as appropriate) to agree that the project can be deemed closed; that the project has fulfilled all of the requirements as documented in the relevant Business Case and Project Management Plan; or, the Sponsor or Business Owner is satisfied that all outstanding items have been satisfactorily addressed or there is some other reason to close the project (e.g. unavailability of appropriate or adequate resourcing).
4. **The Risk Analysis Framework for Determining Measures**

The Biosecurity New Zealand framework should be used for each risk analysis. As discussed in Section 1.6 it consists of:

i) Managing the risk analysis  
ii) Hazard identification  
iii) Risk assessment  
iv) Risk management options  
v) Risk communication and documentation

As “Managing the risk analysis” has been covered in Chapter 3, “Risk communication” covered in Section 3.4, and “documentation” will be covered in Chapter 5, these will not be considered further in any detail here. The following chapter will therefore look at the **Hazard identification, Risk assessment, Risk management options** steps, more commonly referred to as risk analysis.

### 4.1 Information Supporting a Risk Analysis

Information gathering and recording are activities that are usually carried out recursively throughout the risk analysis. Only information sufficient to reach a decision should to be gathered for each particular step, although during earlier stages of a risk analysis information may be collated for later stages of the analysis. As the analysis progresses, information gaps may be identified requiring further enquiries or research. Where information is insufficient or inconclusive expert judgement should be used if appropriate. Assumptions and uncertainties underpinning such judgements should be clearly stated at all stages of the risk analysis.

### 4.2 Reasons for Initiating a Risk Analysis
A risk analysis may be initiated for one of three reasons:

4.2.1 A Risk Analysis for a particular Organism or Disease

The need for a risk analysis on a specific recognized pest or disease may arise in situations such as:

- an established infestation or an outbreak of a new organism or disease is discovered within an exporting country or area;
- a new organism or disease is intercepted on an imported commodity;
- a new organism or disease risk is identified by scientific research;
- an organism or disease is introduced into an area;
- an organism or disease is reported to be more damaging in an area other than in its area of origin;
- an organism or disease is repeatedly intercepted;
- an organism or disease is proposed to be imported for research or other purpose;
- an organism is identified as a vector for other recognized unwanted organism or diseases;
- the risk associated with a recognised unwanted organism or disease is unclear.

In such cases, the hazard is known and the fact can be recorded in preparation for risk assessment. Where the risk analysis is specifically aimed at determining if measures should be developed for the pest or disease, the risk analysis process may progress immediately to the second stage of the risk analysis process (risk assessment).

4.2.2 A Risk Analysis for a Pathway

The need for a risk analysis on a specific pathway may arise in situations such as:

- international trade is proposed with a commodity not previously imported into New Zealand or a commodity from a new area of origin;
- a new organism is to be imported for selection and scientific research, and could potentially be hosts to biosecurity hazards;
- a pathway other than commodity import is identified (natural spread, packing material, mail, garbage, compost, passenger baggage etc.);
- a change in susceptibility or resistance of a host organism to an associated organism or disease is identified.

In these situations, the pathway is not itself the hazard; rather, the potential hazard is the
organism or disease that may be carried by the pathway. The risk analysis should therefore proceed through the hazard identification stage.

4.2.3 A Risk Analysis for a Review or Revision of Measures or Policy

A need for a new or revised risk analysis may arise from situations such as:

- a national review of biosecurity regulations, requirements or operations;
- elaboration of an official control programme (e.g. certification scheme) to avoid unacceptable economic impact of specified unwanted organisms;
- evaluation of a regulatory proposal of another country or international organisation;
- possible introduction of a new system, process, procedures or new information that could influence a previous decision (e.g. a new treatment or loss of a treatment; new diagnostic methods);
- an international dispute on sanitary or phytosanitary measures;
- the biosecurity situation in New Zealand changes or political boundaries have changed.

In most of these situations the pest or disease is recognized, i.e. the biosecurity hazard is known and the fact can be recorded in preparation for risk assessment stage. Otherwise, the biosecurity hazard should be identified or confirmed.

4.3 Hazard Identification

Hazard identification is an essential step that must be conducted prior to a risk assessment where the hazard is not itself defined in the scope of the risk analysis (e.g. a pest risk assessment). To effectively manage the risks associated with imported risk goods, unwanted organisms or diseases which could be introduced by the risk goods into New Zealand and are capable of, or potentially capable of, causing unwanted harm must be identified. Such unwanted organisms and diseases are referred to as hazards by the World Organisation of Animal Health, and as “regulated pests” under the International Plant Protection Convention. For the purposes of these procedures the more common term of “hazards” will be used.

A hazard is any organism or disease that has the potential to produce adverse consequences. Under section 22 of the Biosecurity Act (1993), a Chief Technical Officer

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15 See Appendix 1 section 2.3.1 for further details
must have regard to the following matters before recommending that an import health standard be issued:

| The nature and possible effect on people, the New Zealand environment, and the New Zealand economy of any organisms that the goods specified in an import health standard may bring into New Zealand. |

The environment can be further defined as including ecosystems and their constituent parts, including people and their communities; and all natural and physical resources; and amenity values; and the aesthetic, cultural, economic, and social conditions that affect or are affected by any matter referred to above.

Each organism or disease should be dealt with separately with a reasoned, logical and referenced discussion of its relevant epidemiology including an assessment of its likely presence in the exporting country. A conclusion is then reached as to whether the risk good or conveyance under consideration is a potential vehicle for the introduction of the organism or disease into New Zealand. If it is, the organism or disease is classified as a potential hazard for further consideration in a risk assessment.

A risk analysis may be concluded if the hazard identification step fails to identify potential hazards associated with an imported risk good or conveyance. If an importing country applies the appropriate sanitary standards recommended by the World Organisation of Animal Health, or phytosanitary standards recommended under the International Plant Protection Convention, for a hazard organism or disease, there is also no need to conduct a risk analysis.

### 4.3.1 Assembling a list of potential hazards

A list of organisms and diseases likely to be associated with the pathway (i.e. associated with the commodity) should be assembled. The list may include organisms or diseases for which the biosecurity hazard is not clear. The list may be generated by any combination of:

- scientific and other literature searches;
- overseas and New Zealand experience of pathway/commodity and organism associations;
• national and international databases on interceptions/incursions;
• expert consultation;
• results from targeted survey (e.g. container, or other Border Monitoring Group or international surveys);
• requests for information from other countries or regions.

NOTE: When requesting information from other countries or region, requests should be as specific as possible and limited to information essential to the analysis. Occasionally countries may not respond to our requests for information and the risk analysis will have to proceed regardless. In these circumstances care will be taken to acknowledge any added uncertainty arising from the lack of country-derived information.

It is important to also consider organisms or diseases that might be associated with material that is contaminating the risk good, if that contaminating material can not be easily separated from the goods on import.

Before performing a new risk analysis, a check should be made as to whether the organism, disease, risk good or pathway has already been subjected to a risk analysis or some aspect of a risk analysis, whether nationally or internationally. The validity of any existing analysis should be checked as circumstances and information may have changed. Its relevance to the risk analysis area should be confirmed.

4.3.2 Generic criteria for determining potential hazards

When considering whether an identified organism or disease should be included in the hazard list for a particular risk analysis, the following questions should be considered:

Is the organism or disease associated with the commodity or conveyance?

If the organism or disease will not be associated with the commodity or conveyance under consideration, it should not be consider a hazard. For example, gastro-intestinal parasites need not be considered in a risk analysis for semen or embryos as it is biologically implausible that these commodities would be a potential vehicle for such organisms. The methods of production, manufacturing or processing may also exclude certain categories of organisms. Highly processed commodities, such as live virus vaccines or hormonal products derived from sera are not likely to be contaminated with certain bacteria or viruses because of their method of production. Provided details of these production methods and a verifiable quality control program, that includes testing, are included as part of a commodity description, these organisms would not need to be considered individually in a
risk analysis. Hitchhiker organisms can be included in this list if they have been recorded as being or could be considered likely to be associated with the commodity or conveyance.

**Is the organism or disease absent from New Zealand but likely to be present in the exporting country?**

An evaluation of an exporting country’s relevant service (e.g. Veterinary Service for animal hazards or a National Plant Protection Organization for plant based hazards), surveillance and control programs and zoning and regionalization systems are important factors to consider when assessing the likelihood of hazards being present and associated with the risk good in the exporting country. They enable the exporting country to substantiate claims of organism or disease status and the importing country to establish and maintain confidence in such claims.

If a country claims that it is free of a particular hazard, supporting evidence must be documented. In such cases the appropriate measure to be applied may be certification from the Veterinary Authority or National Plant Protection Organization in the exporting country that it is free of the hazard.

**Is the organism or disease present in New Zealand and likely to be present in the exporting country, and meets one of the following criteria?**

- The organisms are vectors of pathogens or parasites, but whose populations in New Zealand are free of the pathogen or parasite of concern.
- The organisms have strains that do not occur in New Zealand, though the overall species does occur in New Zealand.

  *Note: A “strain” refers to any group of organisms considered to be of the same species but with different shared characteristics, which makes the group distinct to the currently occurring population at a sub-specific level. Measures to exclude strains may be necessary where the strains display different characteristics that may cause them to have greater or different consequences. This is justifiable under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and is an implicit requirement under the Biosecurity Act which arises through: (i) a Chief Technical Officer’s obligation when recommending an import health standard to have regard to the effects of “organisms” (i.e. it doesn’t refer to “species”) (section 22(5)(b) BSA); and (ii) New Zealand’s international obligations (s22(5)(c) BSA).*

- The organisms differ genetically from those that occur in New Zealand in a way that
may present a potential for greater consequences in New Zealand, either from the organism itself or through interactions with existing organisms in New Zealand.

- Examples of genetic differences potentially resulting in greater consequences would primarily related to strain differences already mentioned, but could also include the consequences of increasing genetic diversity in an otherwise monoclonal or low variability population. For example Dothistroma pini, a foliage disease of Pinus species, is represented by only one mating type in New Zealand. The reduced genetic variability, and lack of opportunity for genetic recombination, provides a relatively high level of predictability in the epidemiology of the disease in New Zealand. This predictability enables industry to more effectively manage the impacts of the disease on plantation forestry.

- The organisms or diseases are already in New Zealand however the nature of the imports would significantly increase the existing hazard.

- If the organism in its current habitat in New Zealand does not usually come into contact with people, and the infested imported goods (e.g. spiders on fresh produce) provide an exposure to people that is much greater than what normally occurs, then measures equivalent to those applied in New Zealand to mitigate the risk can be justified. For example, populations of red-back spiders (Latrodectus hasselti) were known to be present in New Zealand in areas where contact with people would be unlikely to occur (e.g. around Lake Te Anau). However, their arrival on bunches of imported grapes would greatly increase the exposure to people, and MAF therefore requires that adequate treatment of such commodities is carried out to mitigate this hazard.

- The organisms or diseases are already in New Zealand however their presence is geographically bounded.

- Such measures may be justifiable if the presence of the organism in New Zealand is geographically bounded and importation is taking the organism to areas in New Zealand where it is not known to occur. However, measures should not be greater than those taken to restrict the movement of the organism within New Zealand, as per our international obligations.

- The organisms or diseases have host associations different to those currently present in New Zealand.

- Measures against such organisms may be justifiable where there are clear differences in host associations between the one found in New Zealand and that in the country of origin. For example, MAF currently takes action against the fungus Rhizoctonia solani when imported on pine products, although the fungus is present in New Zealand. Experts have identified 12 different ‘types’ of R. solani based on host associations, only one of which is associated with Pinus spp. There are no records of R. solani on Pine species in New Zealand, and MAF consequently treats this organism as a potential hazard.

- The organisms or diseases have only minimal information available and as such
should be considered a hazard at this stage, as the more detailed risk assessment process will determine the level of likely risk.

- The organisms or diseases have free zones or zones of low prevalence in New Zealand that are established under a national or regional pest management strategy or small-scale program and where the movement of host products into the zone is under statutory control.

- The organisms or diseases are listed on the unwanted organisms register as a notifiable organism.

Where categories of organisms are excluded, a description of the category and the rationale for their exclusion should be included as part of the hazard identification process. Diseases of unknown aetiology can be included in the hazard list if the causal agent of a particular set of symptoms has not as yet been fully identified and they have been shown to produce consistent symptoms and to be transmissible.

### 4.3.3 Presentation of hazard identification

Information gathering is particularly important at the hazard identification stage in order to clarify:

- the identity of the hazard;
- any hazard leading to a potential unwanted consequence.

In addition, other information on the organism may include:

- its geographical distribution;
- hosts and/or habitats;
- association with the commodity.

The source of information must be referenced correctly. The latest taxonomy and nomenclature should be used. An example of a hazard identification for a specific organism is provided in Plate 4.1. For the purposes of demonstration the risk analysis that the example in Plate 4.1 is based on can be assumed to be a generic import risk analysis for domestic horses (*Equus caballus*).
African horse sickness

1.1 Hazard identification

1.1.1 Aetiologic agent: Family Reoviridae, Genus Orbivirus, African horse sickness viruses 1 to 10

1.1.2 OIE: List A

1.1.3 New Zealand’s status: African horse sickness (AHS) has never been reported in New Zealand and is classified as an exotic disease.

1.1.4 Epidemiology

African horse sickness (AHS) is an infectious non-contagious disease of horses and other Solipeds (Order Perissodactyla) caused by an Orbivirus and transmitted by Culicoides midges (Lagreid, 1996). There are nine known serotypes all of which may cause significant mortality in horses (Coetzer and Eramus, 1994). It is endemic in tropical East and West Africa, from where it regularly spreads to southern, and occasionally, northern Africa ((Coetzer and Eramus, 1994; Anonymous, 1995). AHS occurs seasonally and is influenced by climatic conditions favouring the breeding of Culicoides midges (Anonymous, 1997; Mellor and Wellby, 1998. Most horses are infected between sunset and sunrise when Culicoides midges are most active ((Coetzer and Eramus, 1994).)

There are four classical forms of AHS: pulmonary, cardiac, mixed and horse sickness fever. The pulmonary form has a short incubation period, ranging from 3 to 5 days, and a marked and progressive respiratory involvement leading to death in more than 95% of cases within 4 to 5 days. The incubation period for the cardiac form varies from 7 to 14 days, followed by clinical disease lasting for 3 to 8 days with death in 50% to 70% of cases. The mixed form is characterised by a combination of respiratory and cardiac involvement with an incubation period and mortality rate roughly halfway between the pulmonary and cardiac forms. Horse sickness fever is the mildest form and is frequently overlooked in natural outbreaks. The incubation period varies from 5 to 14 days and is followed by a low grade fluctuating fever lasting for 5 to 8 days. All affected animals recover. This form of the disease is usually observed in immune animals infected with a heterologous virus type or in resistant species, such as the donkey and zebra. Horses are the most susceptible equine species, followed by mules, while most infections in donkeys and zebras are subclinical (Lagreid, 1996; Anonymous, 1996). In view of the high mortality rate in horses, this species is regarded as
The virus is present in all body fluids and tissues from the onset of fever until recovery. Viraemia in horses is of variable duration, typically lasting for 4-8 days, but no longer than 21 days, while in donkeys it may last up to 28 days (Anonymous, 1995). Horses that recover from AHS do not remain carriers. Survivors develop a strong immunity to the particular serotype with which they were infected. While this may confer some cross-protection to infection with other serotypes, a strong challenge may overcome it (Coetzer and Eramus, 1994).

Two types of vaccine are most commonly used: a polyvalent or monovalent live vaccine and an inactivated monovalent vaccine (Anonymous, 1996). While both types of vaccine provide protection against clinical disease, vaccinated animals may still develop a viraemia sufficiently high enough to infect vectors. Problems remain with some live vaccines reverting to virulence although the opportunity to escape the host would be limited as the viraemia associated with a live vaccine is likely to be of a similar duration to that occurring in a natural infection. Subunit vaccines which are being developed offer the most effective means of inducing protective immunity. They are not subject to reversion or vector transmission (Lagreid, 1996).

1.1.5 Conclusion

While domestic horses that recover from infection do not remain carriers, horses that are either naturally infected or vaccinated with a live vaccine may be viraemic for up to 21 days and therefore potential vehicles for AHS virus. As a result AHS virus is classified as a potential hazard.

A summary list of potential hazards such as that provided in Table 4.1 may be created to be included in the executive summary or as an Appendix to the risk analysis.
### Table 4.1: An example of a template of a list of potential hazards. The rationale for classifying each hazard according to the criteria and the conclusion reached must be supported by a referenced discussion as above. (y=yes; n=no; n/a = not applicable).

| Common name          | Scientific name         | In NZ? | Vector of a hazard | More virulent strains on goods overseas | Genetic difference may cause greater consequence | In NZ but association with goods increases hazard | In NZ but geographically bounded | In NZ but has different host associations | No or little information on organism | Under official control or notifiable | Potential hazard |
|----------------------|-------------------------|--------|--------------------|-----------------------------------------|-------------------------------------------------|-------------------------------------------------|----------------------------------|-----------------------------------|--------------------------------------|--------------------------------------|------------------|------------------|
| Foot & mouth disease | Family Piconiviridae, genus Apthorvirus, FMD virus A, Asia 1, C,O, SAT1, SAT2, SAT3 | N      | N                  | n/a                                     | n/a                                             | n/a                                             | n/a                                             | n/a                                             | N                                    | n/a                                             | Y                |
| African horse sickness | Family Reoviridae, Genus Orbivirus African Horse sickness viruses 1 to 10 | N      | N                  | n/a                                     | n/a                                             | n/a                                             | n/a                                             | n/a                                             | N                                    | n/a                                             | Y                |
| Bovine tuberculosis | Mycobacterium bovis | Y      | N                  | N                                       | N                                               | N                                               | N                                               | N                                               | Y                                    | Y                                               | Y                |
| Newcastle disease    | Family Paramyxoviridae genus Paramyxovirus Avian PMV1 | N      | N                  | n/a                                     | n/a                                             | n/a                                             | n/a                                             | n/a                                             | N                                    | n/a                                             | Y                |
| Enzootic bovine leucosis | Family Retroviridae genus “blv-hlv retroviruses” type species bovine leukemia virus | Y      | N                  | N                                       | N                                               | N                                               | N                                               | N                                               | N                                    | N                                               | N                |
| Infectious bovine rhinotracheitis | Family Herpesviridae Subfamily Alphaherpesvirinae, Genus Varicellovirus bovine herpesvirus 1 (BoHV-1) | Y      | N                  | Y                                       | N                                               | N                                               | N                                               | N                                               | N                                    | N                                               | Y                |
| Johne's disease      | Mycobacterium paratuberculosis | Y      | N                  | N                                       | N                                               | N                                               | N                                               | N                                               | N                                    | N                                               | N                |
| Biting midges        | Culicoides spp          | N      | N                  | n/a                                     | n/a                                             | n/a                                             | n/a                                             | n/a                                             | N                                    | n/a                                             | N                |
### NEW ZEALAND

<table>
<thead>
<tr>
<th>Disease/Pathogen</th>
<th>Y</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>N</th>
<th>Y</th>
<th>Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salmonellosis Salmonella enteric subsp. Enterica, serovar Typhimurium DT 104</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>- Zucchini yellow mosaic virus</td>
<td>N</td>
<td>N</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>N</td>
<td>n/a</td>
<td>Y</td>
</tr>
<tr>
<td>Cotton aphid Aphis gossypii</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>Leaf spot Fusarium oxysporum</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Red-back spider Latrpedectis hasselti</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Rhizoctonia leaf blight Rhizoctonia solani</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Needle blight Dothistroma pini</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>
4.3.4 Hazard Scoping

The hazard scoping step looks at the list of hazards together with other aspects of the project that may already be determined, and attempts where possible to establish a mechanism to reduce the extent of effort required to undertake the risk assessment stage of the project. Hazard scoping also determines the type of risk assessment that will be applicable to the project and the hazards.

4.3.4.1 Mechanisms for grouping hazards

unnecessary duplication of effort in the assessment stage of the project. What is both consistent and critical to each of the methods is that organisms within each group of hazards share a set of biological traits that provide a common risk profile appropriate to the grouping. If a common risk profile can not be established with any confidence between the identified hazards, grouping of hazards would not be appropriate. The rationale for grouping the hazards should be documented along with any assumptions supporting the grouping.

Table 4.2: Potential methods for grouping hazards.

<table>
<thead>
<tr>
<th>Group type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available Measures</td>
<td>If it has been determined in the scoping of the project that only a few measures options are available to the analysis, the critical characteristics of these measures in terms of applicability to a particular set of biological traits of the target hazard can form the basis of the groupings, e.g. if area freedom and visual inspection and sterilising heat treatment are the only measures options available, hazards could be grouped as follows: a) Not in export area; b) Can be detected on inspection; c) Neither of the first two options.</td>
</tr>
<tr>
<td>Use of a Higher Classification</td>
<td>In instances where there is insufficient information about organisms or groups of organisms to allow an adequate assessment of risks to be undertaken, the organism or group of organisms can be grouped together with a representative organism or group of organisms with sufficient information. It must be expected that the representative organism would have similar risk attributes to the organisms with insufficient known information.</td>
</tr>
</tbody>
</table>

4.3.4.2 Determining which type of risk assessment is applicable
Once the risk analysis has been scoped and potential hazards identified the type of risk assessment that is applicable can be determined. The *Agreement on the Application of Sanitary and Phytosanitary Measures*\(^\text{16}\) defines two types of risk assessments, a disease or pest risk assessment and a food safety risk assessment. In some situations both types of risk assessment may be applicable. Table 4.3 provides a guide to the type of risk assessment required, the responsible government department and applicable legislation.

Since the Biosecurity Act (1993) is only concerned with the risks associated with hazard-causing organisms\(^\text{17}\), the risks associated with additives, contaminant or toxins need to be considered under different legislation. For animal feeds the relevant legislation is the Agricultural Compounds and Veterinary Medicines Act (1997)\(^\text{16}\), while for food intended for human consumption the applicable legislation is the Food Act (1981) and the Food Regulations (1984)\(^\text{18}\).

Table 4.3: Which type of risk assessment is applicable? (BNZ) Biosecurity New Zealand; (NZFSA) New Zealand Food Safety Authority; (MoH) Ministry of Health; (ACVMA) Agricultural Compounds and Veterinary Medicines Act (1997); (BSA) Biosecurity Act (1993); (FA) Food Act (1981); (HTA) Human Tissues Act (1964); (HART) Human Assisted Reproductive Technology Act (2004).

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Type of risk assessment responsible department and applicable legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Disease or pest risk assessment</td>
</tr>
<tr>
<td>1. Animals or products of animal origin</td>
<td></td>
</tr>
<tr>
<td>Live animals for breeding</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Live animals for slaughter</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Genetic material: in-vitro and in-vivo derived embryos, semen, brood-combs of bees and hatching eggs</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Animal products for human consumption</td>
<td>BNZ (BSA)</td>
</tr>
</tbody>
</table>

\(^{16}\) See Appendix 2 section 2.4.1 for further details.  \(^{15}\) See Appendix 2 section 2.2 for further details.

\(^{17}\) See Appendix 2 section 2.3.2 for further details.

\(^{18}\) See Appendix 1 section 2.2.3 for further details.
<table>
<thead>
<tr>
<th>Category</th>
<th>Regulator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal products for animal feeding</td>
<td>BNZ (BSA, ACVMA)</td>
</tr>
<tr>
<td>Animal products for pharmaceutical or surgical use</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Animal products for agricultural or industrial use</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Biological products: for example, includes sera, inactivated or live vaccines and microbial genetic material</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Pathological material (non-human)</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Biological products and pathological material of human origin</td>
<td>MoH (HTA, HART)</td>
</tr>
<tr>
<td><strong>2. Plant or products of plant origin</strong></td>
<td></td>
</tr>
<tr>
<td>Feedstuffs for animal consumption e.g. grains, meals derived from grains</td>
<td>BNZ (BSA) NZFSA (ACVMA)</td>
</tr>
<tr>
<td>Plant products for human consumption</td>
<td>BNZ (BSA) NZFSA (ACVMA)</td>
</tr>
<tr>
<td>Live plants or plant parts for cultivation</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Plant products not for consumption</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td><strong>3. Inanimate objects or non-descript organic material</strong></td>
<td></td>
</tr>
<tr>
<td>Water, soil, earth and organic matter</td>
<td>BNZ (BSA)</td>
</tr>
<tr>
<td>Inanimate objects e.g. steel, plastic, tires</td>
<td>BNZ (BSA)</td>
</tr>
</tbody>
</table>

**4.3.5 Summary of Hazard Identification**

Each organism should be dealt with separately with a reasoned, logical and referenced discussion of its relevant epidemiology including an assessment of its likely presence in the exporting country. A conclusion is then reached as to whether the commodity under consideration is a potential vehicle for introduction of the organism/disease into the importing country. If it is, the organism is classified as a hazard for further consideration in the risk analysis. Although less desirable than individual examination, where due to large numbers, organisms are to be considered in groups, the same process should be followed for each group. Depending on factors such as the nature of the commodity, the degree of processing, or method of storage and transport some organisms may be excluded from further consideration.
4.4 Risk Assessment

A risk assessment evaluates the likelihood and the biological, environmental, human health, and economic consequences of the entry, establishment and exposure of a potential hazard to New Zealand. The aim is to identify hazards which present an unacceptable level of risk, for which risk management measures are required. A risk assessment consists of four inter-related steps:

v) Assessment of likelihood of entry
vi) Assessment of likelihood of exposure and establishment
vii) Assessment of consequences
viii) Risk estimation

These steps will be considered in more detail in the following sections. In each case a generic method, applicable to all types of risk analysis, is followed by guidance on factors to consider. The list of factors is not comprehensive and not all factors will be applicable in all cases.

A decision will need to be made on a case by case basis, whether it is more appropriate to complete the consequence assessment before assessing the likelihood of entry, exposure and establishment. In cases such as a pest risk analysis for an internationally recognised pest with clear adverse human, plant or animal health, environmental or socioeconomic consequences, it will not be necessary to assess the consequences in detail, a summary will suffice. It will generally be appropriate to provide this before undertaking an analysis of the likelihood of entry, exposure and establishment.

In the case of an import risk analysis, the commodity under consideration, which may act as a vehicle for a potential hazard, must be evaluated in the form that it is intended to be used, processed or sold when imported into New Zealand. In all cases care should be taken to ensure the assessment only considers risks and information relevant to the scope of the project.

4.4.1 Entry assessment

The aim of this step is to assess the likelihood of movement of a potential hazard from its country of origin into a risk analysis area via an imported commodity, pathway or
A conveys. An entry assessment is equivalent to a release assessment in *World Organisation of Animal Health* terminology, and assessment of the probability of introduction in *International Plant Protection Convention* terminology (see Section 1.6).

Each potential hazard or group of hazards should be dealt with separately with a reasoned, logical and referenced discussion of its relevant epidemiology and/or biology to:

i) describe the biological mechanisms necessary for a commodity or pathway to become infected, infested or contaminated,

*Note: A scenario tree provides a useful conceptual framework to assist in identifying and describing biological pathways. Figure provides an example for African horse sickness.*

ii) estimate the likelihood of a commodity or pathway being infected, infested or contaminated when imported into New Zealand i.e. the likelihood of the potential hazard surviving transport and storage

In the case of a single species pest risk assessment this step will also involve pathway identification. Each of the pathways or commodities with which the potential hazard may be associated within the scope of the assessment, from its origin to its establishment in New Zealand, will need to be assessed. Pathways may be identified in relation to the geographical distribution and host range of the hazard. Interception data may provide evidence of the ability of a potential hazard to be associated with a pathway and to survive in transport or storage.

A scenario tree outlining the biological pathways necessary for the entry of the organism or disease under consideration should be developed (see Figure 4.1 for an example). For a pathway-based assessment the scenario tree may be common for all the identified hazards and can be provided in the introduction to the analysis. For organism-based assessments that include a number of different pathways, a scenario tree may need to be developed for each individual pathway.

A conclusion should be stated on the likelihood of entry of each potential hazard or in the case of a pest risk analysis, along each potential pathway. The risk analysis may be concluded at this point if the likelihood of the potential hazard being able to enter into New Zealand is negligible.

**Figure 4.1: A scenario tree for an entry assessment outlining the biological pathways**
necessary for a horse to become infected and harbour with African horse sickness virus when imported.
4.4.1.1 **Possible factors to consider during entry assessment**

The following are provided as a guide to what factors could be considered during an entry assessment:

a) **Biological factors:**
   - susceptibility of a commodity or pathway to infection or contamination by the potential hazard;
   - means of transmission of the potential hazard;
     - horizontal transmission
     - direct (contact, airborne spread, ingestion, coitus)
     - indirect (mechanical and biological vectors, intermediate hosts)
     - vertical transmission (from an infected female to a foetus or egg)
   - infectivity, virulence, stability or reproductive strategy of the potential hazard;
   - demographics of the potential hazard;
   - outcome of infection or contamination (sterile immunity, incubatory or convalescent carriers, latent infection);
   - in the case of diseases, routes of infection (oral, respiratory, percutaneous etc) and predilection sites of the potential hazard.

b) **Country of origin factors:**
   - incidence and prevalence of hazard in the country of origin (annually or seasonally);
   - evaluation of the exporting country's pest and disease management systems, including surveillance;
   - seasonal timing;
   - existence of hazard-free areas and areas of low hazard prevalence in the exporting country.

c) **Commodity/pathway factors:**
   - ease of contamination;
   - effect of relevant processes (e.g. refrigeration) and production methods in the country of origin, country of destination, or in transport or storage;
   - volume and frequency of movement of commodity to be imported along the pathway;
   - speed and conditions of transport and duration of the life cycle of the hazard in relation to time in transport and storage;
   - vulnerability of the life-stages during transport or storage.

For the sake of durability of the risk analysis, the entry assessment should ignore any hazard management measures such as vaccination, testing, treatment and quarantine in the country of origin or within New Zealand, as these may change over time. Similarly cultural
and commercial procedures applied at the place of origin should not be considered as part of the entry assessment. However, all such measures should inform the assessment of risk management options. Plate 4.2 provides an example of a release assessment for African horse sickness virus.

Plate 4.2: An example of a release assessment for African horse sickness virus.

Risk assessment

Entry assessment

Since infections occur seasonally in the endemic areas of Africa (Coetzer and Eramus, 1994; Anonymous, 1997; Mellor and Welby, 1998) the likelihood of a horse incubating AHS or being viraemic when imported increases during summer and autumn. In South Africa, for instance, AHS occurs every summer in the northern provinces, with the first cases occurring in February. The disease spreads southwards over the next few months, with the epidemic stopping abruptly in late April or early May after the first frosts (Coetzer and Eramus, 1994). There may be several months during the drier or cooler times of the year when vectors are inactive and horses are unlikely to become infected. Provided such periods can be sufficiently well defined, and an allowance made for the maximum duration of viraemia in horses that become infected late in the season, there may be a window of opportunity when the likelihood of a horse incubating AHS or being viraemic when imported is negligible.

Domestic horses are most likely to be transported to New Zealand by air. Travel times are likely to be short, perhaps less than 24 hours. In such circumstances it is likely that a viraemic horse, particularly one that has been vaccinated or suffering from horse sickness fever, characterised by a low grade fluctuating fever, or in the pre-clinical incubatory phase of AHS, would be imported into New Zealand.
Conclusion

If a horse is exported to New Zealand during the winter and spring months from the endemic areas in Africa there is a negligible likelihood of it carrying AHS virus. For other times of the year the likelihood of a horse harbouring AHS virus is non-negligible.

4.4.2 Exposure and Establishment Assessment

The aim of this step is to assess the likelihood of the potential hazard or group of hazards, having entered a risk analysis area, becoming established in it, and/or having the potential to cause an adverse consequence. A potential hazard may cause an adverse consequence without necessarily being established, for example, spiders on grapes can adversely affect vulnerable consumers. Each potential hazard, group of hazards, or, in the case of a pest risk analysis, each pathway, should be dealt with separately with a reasoned, logical and referenced discussion of its relevant epidemiology and/or biology to:

i) describe the biological mechanisms necessary for the potential hazard to become established;

ii) describe the mechanism for the exposure of the environment or other receptors in New Zealand to the potential hazard;

iii) estimate the likelihood of establishment and/or exposure occurring.

A scenario tree outlining the biological pathways necessary for the exposure and establishment of the organism or disease under consideration should be developed (see Figure 4.3 for an example). For a pathway-based assessment this exposure and establishment scenario tree may be common for all the identified hazards and can be provided in the introduction to the analysis. For organism-based assessments that include a number of different pathways, a scenario tree may need to be developed for each individual pathway.

Figure 4.3: A scenario tree for the exposure assessment outlining the biological pathways necessary for susceptible animals to become infected with African horse sickness virus in
It is difficult to predict how an organism or disease will behave in a new environment, and the environmental characteristics within which an organism or disease lives in its natural ranges may not equate to its environmental tolerance in new areas of establishment. Case histories concerning comparable hazards may be considered and expert judgement may be required to facilitate the risk assessment.
A conclusion should be stated on the likelihood of exposure and establishment of each potential hazard, group of hazards or pathway. The risk analysis may be concluded at this point if the likelihood of establishment and exposure in New Zealand is negligible.

4.4.2.1 Possible factors to consider during an exposure and establishment assessment

The following are provided as a guide to what factors could be considered during an exposure and establishment assessment:

a) Biological factors:
- means of transmission of the potential hazard from the commodity or pathway to a suitable host or environment;
  - horizontal transmission
  - direct (contact, airborne spread, ingestion, coitus, water splash)
  - indirect (mechanical and biological vectors, intermediate hosts)
  - vertical transmission
- in the case of diseases, route of infection (oral, respiratory, percutaneous etc) and outcome of infection (sterile immunity, incubatory or convalescent carriers, latent infection);
- infectivity, virulence or reproductive strategy of the potential hazard. Characteristics, which enable the potential hazard to reproduce effectively in the new environment, such as parthenogenesis/self-crossing, duration of the life cycle, number of generations per year, resting stage etc., should be identified;
- adaptability and stability of the potential hazard;

Note: Identify whether the potential hazard is polymorphic and the degree to which it has demonstrated the ability to adapt to conditions like those in the risk analysis area, for instance by becoming established elsewhere outside its natural range. Genotypic and phenotypic variability facilitates a hazard’s ability to withstand environmental fluctuations, to adapt to a wider range of habitats, and to overcome host resistance. Similarly organisms with generalised habitat preferences, unspecialised diets and behaviours, and non-migratory habit are more likely to be able to adapt to a new environment.
- demographics of the potential hazard;
- minimum population needed for establishment - If possible, the threshold population that is required for establishment should be estimated;
- susceptibility of the environment likely to be exposed to the potential hazard, to adverse impacts such as infection/infestation, predation, competition or hybridization.

b) Risk Analysis Area factors
- presence of potential hosts including intermediate or alternate hosts, vectors or habitats and how abundant or widely distributed they may be;
geographical and environmental characteristics including rainfall, soil and temperature;

Note: Climatic modelling systems may be used to compare climatic data on the known distribution of a potential hazard with that in the risk analysis area. It is necessary to bear in mind that the environmental characteristics within which an organism lives in its natural ranges may not equate to its environmental tolerance – it may be able to live within significantly broader habitat parameters. It should be noted that the environment is likely to have different effects on the potential hazard, its host and its vector. This needs to be recognised in determining whether the interaction between these organisms in the area of origin is maintained in the risk analysis area to the benefit or detriment of the hazard. The likelihood of establishment in a protected environment, e.g. in glasshouses, should also be considered.

presence of potential competitors or predators which could reduce the likelihood of establishment.

c) Commodity/pathway factors

- intended use of the commodity (e.g. for planting, processing or consumption);
- unintended use of the commodity (e.g. wood packaging used for fencing);
- quantity of commodity to be imported on a pathway or pathways;
- proximity of entry, transit and destination points to suitable hosts or habitats;
- likelihood of repeated introductions maintaining a permanent non-breeding population of the potential hazard;
- waste disposal practices- risks from by-products and waste;
- time of year at which import or entry takes place.

Control programmes for other organisms which may hinder the establishment of the potential hazard should be considered at the risk management stage of the analysis. Pests for which control is not feasible should be considered to present a greater risk than those for which treatment is easily accomplished. Plate 4.3 provides an example of an establishment and exposure assessment for African horse sickness.

Plate 4.3: An example of an establishment and exposure assessment for African horse sickness.

<table>
<thead>
<tr>
<th>Exposure assessment</th>
</tr>
</thead>
</table>
| AHS virus is probably maintained in an endemic cycle between Culicoides midges, principally C. imicola, and an as yet unidentified mammalian reservoir host (Anonymous, 1997a; Mellor and Welby, 1998). However, serological evidence indicates that zebras may be the most likely reservoir (Lagreid, 1996; Barnard, 1993). Although the mosquitoes, Aedes aegypti,
Culex pipiens and Anopheles stephensi, biting flies and the dog tick, Rhipicephalus sanguineus, have been demonstrated to transmit AHS virus experimentally, C. imicola is the only recognised natural vector (Coetzer and Eramus, 1994; Anonymous 1995; Radostits et al, 1974). Although C. imicola occurs across Europe and the Mediterranean, AHS has failed to become established outside Africa despite several outbreaks in the Middle East, Spain and Portugal. These outbreaks were associated with the movement of either infected hosts or vectors (Lagreid, 1996). Although it is not understood why AHS did not establish in these areas (Lubroth, 1992), likely reasons include the absence of a suitable reservoir host and large scale vaccination programs.

AHS can be readily transmitted by the parenteral injection of infected blood, particularly by the intravenous route (Coetzer and Eramus, 1994, Anonymous, 2000).

In addition to Solipeds, the vertebrate host range is potentially quite large with antibodies being recorded in camels, goats, sheep, cattle, buffalo, elephants and dogs (Lubroth, 1992). Apart from dogs, which may contract a fatal form of the disease after ingestion of infected horsemeat, the other species appear to be resistant to disease (Laegrid, 1996). As Culicoides midges do not usually feed on dogs, dogs probably play no role in the spread of AHS virus. Pigs, cats and monkeys are refractory to infection (Coetzer and Eramus, 1996). Humans are apparently not susceptible to field strains of the virus, although some vaccine strains can cause encephalitis and retinitis following transnasal infections (Anonymous, 1996).

Even if an incubating carrier or a viraemic animal was to be imported into New Zealand, AHS would not become established because Culicoides midges, recognised as the only natural vectors, do not occur in this country. Furthermore, it is more than likely that the unidentified reservoir host is restricted to Africa as AHS has never become established elsewhere, despite the presence of competent vectors and susceptible animals in Europe and the Mediterranean.

It is possible that semen collected from a viraemic donor might result in a limited outbreak, which would, however, be restricted to inseminated mares. Such a scenario is extremely unlikely as a stallion would normally be imported some time before the breeding season to allow it to settle in most likely more than the maximum period of viraemia. There is also a chance that AHS virus could be spread by iatrogenic transmission if direct blood transfer occurred during the viraemic period by practices such as needle sharing. However, given the value of imported animals and the ready supply of cheap disposable needles and syringes in New Zealand, such a risk would be very unlikely.

Conclusion
While there is a negligible likelihood of AHS becoming established in New Zealand, the likelihood of short term, limited spread from an imported horse harbouring AHS virus is non-negligible.

**4.4.3 Consequence assessment**

The aim of this step is to assess the potential consequences associated with the entry, exposure and establishment of the potential hazard or group of hazards, and to estimate the likelihood of such consequences occurring. In many cases it will include an assessment of the likelihood of spread of the potential hazard within the risk analysis area. This can be used to estimate how rapidly a hazard’s potential economic, societal and/or environmental impacts may be expressed. It also has significance if the potential hazard is liable to enter and establish in an area of low potential consequence and then spread to an area of high potential consequence. In addition it may be important in assessing risk management options when considering the feasibility of containment or eradication of an introduced hazard.

Detailed analysis of the estimated consequences is not necessary if there is sufficient evidence, or it is widely agreed, that the introduction of a hazard will have unacceptable consequences. In such cases, risk assessment will primarily focus on the likelihood of entry, establishment and exposure. It will, however, be necessary to examine impact factors in greater detail when the level of unwanted consequences is in question, or when the level of unwanted consequences is needed to evaluate the strength of measures used for risk management or in assessing the cost-benefit of exclusion or control.

The Biosecurity Act (1993)\(^\text{19}\) requires that the nature and possible effect on people, the New Zealand environment, and the New Zealand economy be considered in developing risk management measures. It is important to appreciate that these matters can only be taken into account to the extent that they are affected by a potential hazard. As a result those effects not related to the potential hazard, for example the impact of cheaper goods on a particular industry or the economy in general, cannot be considered. A causal process must be identified linking the hazard to the potential impact.

The BSA’s definition of the environment is very broad and includes a number of criteria, which may not be relevant to any individual risk analysis. Table 4.4 provides an indication of

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\(^{19}\) Section 22 part 5; of the Biosecurity Act (1993). Further information is provided in Appendix 2 section 2.2.
the relevance of the various criteria and how they may be dealt with.

**Table 4.4: Environmental criteria from the Biosecurity Act (1993)**

<table>
<thead>
<tr>
<th>Environmental criterion</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Ecosystems and their constituent parts, including people and their communities.</td>
<td>This applies to hazards that may have an adverse effect on domestic and indigenous organisms. Consequences for human health should be specifically identified here. Impacts on habitats, such as fragmentation, change in community composition, and change in relationships between components may also be important. For instance, displacement of aquatic vegetation can be brought about by the consumption of plant material by herbivorous species, by the uprooting of macrophytes through digging for food or nesting sites, and by roiling and organic enrichment which increase turbidity and thus reduce light penetration and photosynthesis and the degradation of water quality.</td>
</tr>
<tr>
<td>and habitats, as well as people. communities.</td>
<td></td>
</tr>
<tr>
<td>b) All natural and physical resources:</td>
<td>This applies to hazards that may have an adverse effect on domestic and indigenous organisms. Impacts may occur at the genetic, individual, population, community or ecosystem levels. Potential impacts on indigenous organisms include competition with organisms occupying the same ecological niche, predation, disease, hybridization, parasite or vector of parasite, fragmentation effects on food supply, shelter, breeding sites etc. Indigenous organisms of particular concern include those that occur only in New Zealand, threatened species; keystone species in particular indigenous habitats e.g. Kereru in Podocarp forests, manuka in regenerating forests; and international migratory species.</td>
</tr>
<tr>
<td>• Organisms of all kinds</td>
<td></td>
</tr>
<tr>
<td>• The air, water, and soil in or on which organisms may live.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Domestic species include commercially or culturally important species.</td>
</tr>
<tr>
<td></td>
<td>This applies to hazards such as toxic algae, weeds or burrowing animals.</td>
</tr>
<tr>
<td>Environmental Aspects</td>
<td>Impacts and Examples</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Landscape and land forms;</td>
<td>This applies to hazards such as weeds or herbivores, which can cause a change in vegetation cover. Impacts on nationally important landscapes in protected areas are of particular concern.</td>
</tr>
<tr>
<td>Geological features;</td>
<td>This applies to hazards such as weeds or burrowing animals where they change the face of such features.</td>
</tr>
<tr>
<td>Structures of all kinds;</td>
<td>This applies to hazards such as termites that may cause structural damage to wooden buildings, including houses.</td>
</tr>
<tr>
<td>Systems of interacting living organisms and their environment.</td>
<td>This applies to hazards that may have an adverse effect on whole ecosystem processes, such as the water cycle. For example wetland weeds can change evaporation rates and consequent flow regimes.</td>
</tr>
<tr>
<td>Amenity values.</td>
<td>This applies to hazards that may have an adverse effect on domestic and indigenous organisms or habitats and which may impact on peoples’ perceptions of the pleasantness of a place and recreational opportunities. For example, the pleasure derived from visiting a wilderness area may diminish as the result of an avian disease that leads to a decline in native birds populations. It could also apply in situations where the habits of a proportion of the population are changed, for instance, when the supply of a socially important food is limited because of a pest or disease. A recent example of an organism with the potential to cause significant consequences to amenity values in New Zealand is <em>Didymosphenia geminata</em> (Didymo).</td>
</tr>
<tr>
<td>Aesthetic, cultural, economic and social conditions that affect or are affected by any matters (a) to (c)</td>
<td>These are relevant as some hazards may have an adverse effect on domestic production industries (increased control costs, loss of productivity, the demise of an industry due to loss of trade and flow on social and economic effects) and native animal and plant species (aesthetic and cultural effects due to their...</td>
</tr>
</tbody>
</table>
Each potential hazard or group of hazards should be dealt with separately with a reasoned, logical and referenced discussion to:

i) identify the likely spread within the risk analysis area;

ii) identify the potential biological, environmental, economic and human health consequences associated with the entry, establishment, and exposure of the potential hazard;

(Note: A causal relationship must exist between exposure to a potential hazard and an adverse affect.)

iii) estimate the likelihood of these potential consequences.

A conclusion of the consequences of the entry, establishment, and exposure of the potential hazards should be given. The areas of New Zealand where potential consequences may occur should be stated, as appropriate. Hazards for which the potential consequences are very high (high consequence hazards) should be flagged as such to assist in prioritising other work such as incursion response preparedness (see Section 3.5.3).

The risk assessment may be concluded at this point if potential consequences are not identified or the likelihood of the potential consequences is negligible.

4.4.3.1 Possible factors to consider during consequence assessment

The following are provided as a guide to what factors could be considered during an establishment and exposure assessment:

a) Direct consequences
   • production and environmental consequences;
     - Effects of disease, including morbidity and mortality, sterile immunity, incubatory or convalescent carriers, latent infection;
     - Predation, competition
     - Hybridization
     - production losses;
     - animal welfare.

(Notes: Impacts on Maori cultural, spiritual, environmental and economic values will also need to be considered.)
• human health consequences;
  - morbidity and mortality, sterile immunity, incubatory or convalescent carriers, latent infection);
  - toxicity, allergenicity.

b) Indirect consequences
• economic considerations;
  - control and eradication costs;
  - surveillance costs;
  - reduced tourism and loss of social amenity;
  - costs of environmental restoration;
  - additional health care costs;
  - potential trade losses (embargoes, sanctions, market opportunities).

• Environmental considerations;
  - amenity values; effects on other species for instance those which utilise the species directly affected;
  - effects on ecological community structure;
  - effects on ecosystem processes and the life-supporting capacity of the air, water or soil;
  - undesired effects of control measures;
  - effects on human use (e.g. water quality, fishing);
  - effects on structures of all kinds (e.g. destruction by termites of wooden buildings);
  - social, cultural and aesthetic conditions.

c) Time and place factors

Most consequences will be expressed over a period of time, and it will be necessary to estimate potential impacts, particularly economic consequences over a period of time;
• the consequences may change over time;
• there may be a lag between the establishment of a hazard and the expression of an impact;
• presence of natural/man made barriers to spread; – the potential for movement with commodities or conveyances;
• potential vectors of the hazard (passive or active) in the risk management area;
• natural factors that facilitate dispersal e.g. water and wind.

d) Analytical techniques
There are analytical techniques which can be used in consultation with experts in economics to make a more detailed analysis of the potential economic effects. Note however that non-commercial and environmental consequences are often not adequately measured in terms of prices in established product or service markets. Furthermore a lack of knowledge about potential consequences and the time required for consequences to be realised can make consequence assessment difficult and introduces a degree of uncertainty. In such cases it is likely to be necessary to use qualitative information about the consequences. Assumptions and uncertainties must be clearly documented and the use of expert judgement identified. This is necessary for transparency and may also be useful for identifying and prioritising research needs.

The assessment of the likelihood and consequences of environmental impacts often involves greater uncertainty than the assessment of impacts on cultivated or managed plants/animals. This is due to the lack of information, additional complexity associated with ecosystems and variability associated with unwanted organisms or diseases, hosts or habitats and the lack of baseline data. In these cases it is again necessary to document the areas of uncertainty and the degree of uncertainty in the assessment, and to indicate where expert judgement has been used. Plate 4.4 provides an example of a consequence assessment for African horse sickness virus, while Table 4.5 provides an example of a summary of a consequence assessment.

Plate 4.4: An example of a consequence assessment for African horse sickness.

Although the potential trade implications and costs of control following the introduction of AHS virus in New Zealand are likely to be negligible, the likelihood that those animals that become infected would be significantly affected is high.

Consequence assessment

Horses and dogs are the only animals likely to be affected by AHS virus in New Zealand. It is not a zoonotic disease and would not become established in this country. Since there is likely to be only a very short time span following the importation of a viraemic animal, during which there would be limited opportunities for spread through iatrogenic transmission, ingestion of horse meat and coitus or artificial insemination, the number of animals likely to become infected would be very small. However, the consequences for the affected animal(s) are likely to be severe.

There are unlikely to be any significant trade implications associated with a case of AHS as it
has never occurred outside Africa and the Middle East, neither its natural vector, *Culicoides imicola* nor any *Culicoides* spp in New Zealand and it would be directly associated with a recently imported animal. The costs of an investigation and any short-term control costs are likely to be minimal.

**Conclusion**

Although the potential trade implications and costs of control following the introduction of AHS virus in New Zealand are likely to be negligible, the likelihood that those animals that become infected would be significantly affected is high.

**References**

**Table 4.5: An example of a summary of a consequence assessment for African horse sickness**

<table>
<thead>
<tr>
<th>Consequence</th>
<th>Significance</th>
<th>Likelihood</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Biological</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Horses</td>
<td>High</td>
<td>Non-negligible (medium)</td>
</tr>
<tr>
<td>Dogs</td>
<td>High</td>
<td>Non-Negligible (Medium)</td>
</tr>
<tr>
<td>Other animals</td>
<td>Negligible</td>
<td>Negligible</td>
</tr>
<tr>
<td>Humans</td>
<td>Negligible</td>
<td>Negligible</td>
</tr>
<tr>
<td><strong>Environmental</strong></td>
<td>Negligible</td>
<td>Negligible</td>
</tr>
<tr>
<td><strong>Economic</strong></td>
<td>Negligible</td>
<td>Negligible</td>
</tr>
</tbody>
</table>

**4.4.4 Risk estimation**

The aim of this step is to summarise the conclusions arising from the entry, exposure and establishment, and consequence assessments, to estimate the likelihood of the potential hazard entering the risk analysis area and resulting in adverse consequences. Each potential hazard, or, in the case of a pest risk analysis, pathway, should be dealt with individually. It is not sufficient to conclude that there is a mere possibility of entry, establishment or spread or that there may be potential consequences. An evaluation of the likelihood of each of these factors must be undertaken.
If the estimated risk is not negligible the potential hazard is classified as an actual hazard and risk management measures may be required (while the level of risk may be non-negligible it may still be considered acceptable). It should also be noted that there may be exceptional cases in which the consequences of entry, establishment and exposure would be so great that risk management measures may be considered necessary, even if the likelihood of entry and establishment was initially considered negligible. In such cases a full justification for a non-negligible risk estimate is required.

Plate 4.5 provides an example of a risk estimate for African horse sickness virus.

Plate 4.5: An example of a risk estimate for African horse sickness virus.

<table>
<thead>
<tr>
<th>Risk Estimation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although AHS virus would not become established in New Zealand, the likelihood that a horse imported from an endemic area will be viraemic leading to a limited opportunity for spread to other horses in New Zealand is low. The consequences of infection are likely to be severe for infected animals, particularly if affected by the pulmonary, cardiac or mixed form of the disease. As a result the risk estimate for AHS virus is non-negligible and it is classified as a hazard.</td>
</tr>
</tbody>
</table>

4.4.5 Targeted consultation/peer review of the risk assessment and estimation

It will not normally be necessary to undertake formal external consultation at this stage as stakeholders will be consulted on these sections along with all other parts of the risk analysis at the conclusion of the external peer review (see Section 3.4.2). However targeted peer review (internal and/or external) may be helpful in the following situations:

- When the potential mitigation measures are likely to be contentious and/or costly;
- When there is a high level of uncertainty associated with any of the assessment stages.

The objective of ‘consultation’ at this stage is to check that the risk assessment process is transparent and rigorous and that the list of actual hazards, or in the case of a pest risk analysis, pathways, requiring risk mitigation measures is justifiable.

4.4.6 Assessment of Uncertainty

The purpose of this section of the risk analysis process is to summarise the uncertainties
and assumptions identified during the preceding hazard identification and risk assessment stages. An analysis of these uncertainties and assumptions can then be completed to identify which are critical to the outcomes of the risk analysis. Critical uncertainties or assumptions can then be considered for further research with the aim of reducing the uncertainty or removing the assumption.

As mentioned in Section 3.5.2.2, where there is significant uncertainty in the estimated risk, a precautionary approach to managing risk may be adopted. In these circumstances the measures should be reviewed as soon as additional information becomes available and be consistent with other measures where equivalent uncertainties exist.

### 4.5 Risk Management

Risk management in the context of risk analysis is the process of deciding measures to effectively manage the risks posed by the hazard(s) associated with the commodity or organisms under consideration. It is not acceptable to identify a range of measures that might reduce the risks. There must be a reasoned relationship between the measures chosen and the risk assessment so that the results of the risk assessment support the measure(s).

Since zero-risk is not a reasonable option, the guiding principle for risk management should be to manage risk to achieve the required level of protection that can be justified and is feasible within the limits of available options and resources. Risk management (in the analytical sense) is the process of identifying ways to react to a risk, evaluating the efficacy of these actions, and identifying the most appropriate options.

The uncertainty noted in the assessments of economic consequences and probability of introduction should also be considered and included in the consideration of a risk.

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20 Article 5.7 of the SPS Agreement states that “a Member may provisionally adopt sanitary .... measures” and that “Members shall seek to obtain additional information .... within a reasonable period of time.” Since the plural noun “Members” is used in reference to seeking additional information a co-operative arrangement is implied between the importing and exporting country. That is the onus is not just on the importing country to seek additional information.

management options. Where there is significant uncertainty, a precautionary approach may be adopted. However, the measures selected must nevertheless be based on a risk assessment that takes account of the available scientific information. In these circumstances the measures should be reviewed as soon as additional information becomes available. It is not acceptable to simply conclude that, because there is significant uncertainty, measures will be selected on the basis of a precautionary approach. The rationale for selecting measures must be made apparent.

Each hazard or group of hazards should be dealt with separately using the following framework:

i) Risk evaluation
   - If the risk estimate, determined in the risk assessment, is non-negligible, measures can be justified.

ii) Option evaluation
   a) Identify possible options, including measures identified by international standard setting bodies, where they are available.
      - To assist in the identifying appropriate option(s) an objective, which states what these option(s) should aim to achieve in order to effectively manage the risks, should be formulated. The objective needs to be quite specific, for example, “to effectively manage the risks of AHS, measures should ensure that horses are either not incubating the disease or viraemic when imported”. Statements such as “measures to ensure infected animals are not imported are warranted” must be avoided.
      - It is not acceptable to simply identify a range of options. There must be a rational relationship between the option(s) and the risk assessment.

   b) Evaluate the likelihood of the entry, exposure, establishment or spread of the hazard according to the option(s) that might be applied.

   c) Select an appropriate option or combination of options that will achieve a likelihood of entry, exposure, establishment or spread that reduces the risk to an acceptable level. The following guidelines must be taken into account when selecting option(s):
      - ensure that the option(s) are based on scientific principles.
      - ensure that measures identified by international standard setting bodies are considered. If there is a scientific justification that an international measure does not effectively manage the risks, measures that result in a higher level of protection may be applied. Alternatively less stringent measures than those recommended in international standards may be applied where there is sufficient justification that the risks can be effectively managed.
iii) Monitoring and review

a) measures are audited to ensure that they are achieving the results intended, for example through inspections and random checks.

An example of risk management for African horse sickness appears in Plate 4.6 and for Bactrocera kirki (fruit fly) in Plate 4.7.

Plate 4.6: An example of risk management for African horse sickness virus.

1.3 Risk management

1.3.1 Risk evaluation
Since the risk estimate for AHS virus is non-negligible, sanitary measure(s) will need to be employed to effectively manage the risks to reduce them to a negligible level.

1.3.2 Option evaluation
1.3.2.1 Objective
To effectively manage the risks of AHS virus, sanitary measure(s) need to ensure that horses are not carrying the virus (i.e. not incubating the disease and not viraemic) when given a biosecurity clearance in New Zealand.

1.3.2.2 Options available
As the currently available commercial vaccines are unlikely to prevent viraemia, the only means available to ensure that horses are not carrying the virus when given a biosecurity clearance in New Zealand, is to ensure they are either resident in a free country or free zone, or protect them from insect vectors for a period equal to the maximum duration of viraemia plus the incubation period. Since the incubation period may be up to 14 days and viraemia may last up to 21 days (Lagreid, 1996, Coetzer and Erabus, 1994) horses would need to be protected from insect vectors for up to 35 days. Since the duration of viraemia following vaccination with a live vaccine is likely to be similar to that resulting from a natural challenge, animals would need to be vaccinated no less than 35 days prior to being given a biosecurity clearance.

Articles 2.1.11.2 and 2.1.11.3 of the Code (Anonymous, 2000) detail the accepted standards for defining a free country or free zone while Article 2.1.11.6 specifies the conditions for importing domestic horses from a free country or free zone. The requirements specified in these articles are consistent with the objective outlined in Section 1.3.2.1. As a result they provide appropriate measures to mitigate against the risks associated with AHS virus for horses derived from free countries or free zones.

Article 2.1.11.8 specifies the conditions for the importation of domestic horses from an infected country or an infected zone. The requirements specified in these articles are consistent with the objectives outlined in Section 1.3.2.1, although a negative test for AHS in unvaccinated animals that are protected from vectors is not warranted. A seropositive test in such circumstances indicates past infection, not current infectivity. Apart from the requirement to test unvaccinated animals this article provides appropriate measures to mitigate against the risks associated with AHS virus for horses imported from infected countries or infected zones.

1.3.3 Recommended sanitary measures
1.3.1.1 horses must either:

i) originate from an AHS free country or free zone as specified by Article 2.1.11.2 or article 2.1.11.3 of the Code (Anonymous, 2000) and satisfy the requirements of Article 2.1.11.6 for the importation of domestic horses from an AHS free country or free zone; or

ii) if from a country or zone considered to be infected with AHS, be protected from insect vectors for 35 days prior to being given a biosecurity clearance in New Zealand. A live vaccine may be used, however it must be administered at least 35 days prior to a biosecurity clearance being given in New Zealand.

Plate 4.7: An example of risk management for Bactrocera kirki (fruit fly).
Risk management

Risk evaluation

Since the risk estimate for *Bactrocera kirki* (fruit fly) is high and therefore non-negligible, measure(s) will need to be employed to effectively manage the risks to reduce the risk to an acceptable level.

Option evaluation

Objective

To effectively manage the risks of *Bactrocera kirki* (fruit fly), phytosanitary measure(s) need to ensure, to a level of confidence equivalent to probit level 9, that none of the units in any given consignment of eggplant fresh fruit are infested with *Bactrocera kirki* (fruit fly) when given a biosecurity clearance into New Zealand.

Options available

**Area Freedom:** A contamination level of probit 9 or less of the units in any given consignment of eggplant fresh fruit with *Bactrocera kirki* (fruit fly) will be achieved if the consignment of eggplant fresh fruit originates from an area determined to be free of *Bactrocera kirki* (fruit fly). Area freedom status should be determined in a manner compliant with that stipulated in the International Standards for Phytosanitary Measures; Requirements for the Establishment of Pest Free Areas, IPPC, FAO, Publication 4, 1996.

**Heat Treatment:** A contamination level of probit 9 or less of the units in any given consignment of eggplant fresh fruit with *Bactrocera kirki* (fruit fly) will be achieved if all fruit within each consignment are subjected to a heat treatment that raises all parts of the eggplant fruit from ambient temperature to a temperature of at least 47.2oC and held for a minimum of 20 minutes.

Recommended phytosanitary measures

Eggplants fresh fruit must either:

i) originate from an area free of *Bactrocera kirki* (fruit fly), as stipulated in the International Standards for Phytosanitary Measures; Requirements for the Establishment of Pest Free Areas, IPPC, FAO, Publication 4, 1996; or

ii) if from a country or zone considered to be infected with *Bactrocera kirki* (fruit fly), prior to export undergo a treatment that raises all parts of the eggplant fruit from ambient temperature to a temperature of at least 47.2oC and held for a minimum of 20 minutes.
4.5.1 Option Evaluation – Identifying Possible Options

The measures listed below are examples of those that are most commonly applied to traded commodities. They are applied to pathways, usually consignments of a host, from a specific origin. The measures should be as precise as possible as to consignment type and origins as not to act as barriers to trade by limiting the import of products where this is not justified. Combinations of two or more measures may be needed in order to reduce the risk to an acceptable level. The available measures can be classified into broad categories that relate to the pest status of the pathway in the country of origin. These include measures:

- applied to the consignment;
- applied to prevent or reduce original infestation of the consignment;
- to ensure the area or place of production of the consignment is free from the hazard;
- concerning the prohibition of commodities.

Other options may arise in the risk analysis area (restrictions on the use of a commodity), control measures, introduction of a biological control agent, eradication, and containment. Such options should also be evaluated and will apply in particular if the hazard is already present but not widely distributed in the risk analysis area.

4.5.1.1 Options for consignments

Measures may include any combinations of the following:
- inspection or testing for freedom from a hazard or to a specified hazard tolerance; sample size should be adequate to give an acceptable probability of detecting the hazard;
- prohibition of parts of the host of the hazard;
- a pre-entry or post-entry quarantine system - this system could be considered to be the most intensive form of inspection or testing where suitable facilities and resources are available, and may be the only option for certain hazards not detectable on entry;
- specified conditions of preparation of the consignment (e.g. handling to prevent infestation or reinfestation);
- specified treatment of the consignment - such treatments are applied post harvest or production and could include chemical, thermal, irradiation or other physical methods;
- restrictions on end use, distribution and periods of entry of the commodity.

22 Section 4.5.1 substantially includes text modified from section 3.4 of ISPM 11: Pest risk analysis for quarantine pests, including analysis of environmental risk and living modified organisms. FAO 2004.
4.5.1.2 Options preventing or reducing infestation in the commodity prior to harvest or production

Measures may include:

- treatment of the pre-manufactured commodity or the place of production; restriction of the composition of a consignment so that it is composed of parts that are less susceptible to infestation; producing the commodity under specially protected conditions (containment, isolation);
- production of the commodity at a certain age or a specified time of year;
- production in an officially monitored certification scheme.

4.5.1.3 Options ensuring that the area, place or site of production is free from the hazard

Measures may include:

- organism or disease-free area or country;
  
  Note: phytosanitary requirements for pest-free area status are described in ISPM Pub. No. 4: Requirements for the establishment of pest free areas
- hazard-free place of production or hazard-free production site;
  
  Note: phytosanitary requirements are described in ISPM Pub. No. 10: Requirements for the establishment of pest free places of production and pest-free production sites
- inspection of pre-harvest or pre-production commodity to confirm hazard freedom.

4.5.1.4 Options for other types of pathways

For many types of pathways, the measures considered above to detect the hazard on the consignment or to prevent infestation of the consignment, may also be used or adapted. For certain types of pathways, the following factors should be considered:

- Natural spread of an organism includes movement of the organism by flight, wind dispersal, transport by vectors such as insects or birds and natural migration. If the organism is entering the risk analysis area by natural spread, or is likely to enter in the immediate future, phytosanitary measures may have little effect. Control measures applied in the area of origin could be considered. Similarly, containment or
eradication, supported by suppression and surveillance, in the risk analysis area after entry of the organism could be considered.

- Measures for human travellers and their baggage could include targeted inspections, publicity and fines or incentives. In a few cases, treatments may be possible.

- Contaminated machinery or modes of transport (ships, trains, planes, road transport) could be subjected to cleaning or disinfestation.

4.5.1.5 Options within the importing country

Certain measures applied within New Zealand may also be used. These could include careful surveillance to try and detect the entry of the hazard as early as possible, eradication programmes to eliminate any foci of infestation, public education programmes to limit the extent of any consequences, and/or containment action to limit spread. While these measures are unlikely to be included in an import health standard, the existence of such measures may affect the type of nature of measures included in an import health standard.

4.5.1.6 Prohibition of commodities

If no satisfactory measure to reduce risk to an acceptable level can be found, an option may be to prohibit importation of the relevant commodities. This should be viewed as a measure of last resort and should be considered in light of the anticipated efficacy, especially in instances where the incentives for illegal import may be significant.

4.5.1.7 Certification and other compliance measures

Risk management includes the consideration of appropriate compliance procedures. The most important of these is export certification. The issuance by governments or national authorities of certificates provides official assurance that a consignment meets a specified pre-clearance requirement. It thus confirms that the specified pre-clearance risk management options have been followed. Other compliance measures may be used subject to bilateral or multilateral agreement.

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23 For example see ISPM Pub. No. 7: Export certification system. FAO. 1997 23 For example see ISPM Pub. No. 12: Guidelines for Phytosanitary Certificates. FAO. 2002
4.5.2 Conclusion of risk management

The result of the risk management procedure will be either that no measures are identified which are considered appropriate, or the selection of one or more management options that have been found to lower the risk associated with the hazard(s) to an acceptable level. These management options form the basis of regulations or requirements specified with an import health standard. The application and maintenance of such regulations is subject to certain obligations that may be relevant to risk analysis, in the case of contracting parties to the various international agreements (see Appendix 1).

4.6 Assessment of Residual Risk

Residual risk can be described as the risk remaining after measures have been implemented. Assuming:

- the measures have been implemented in a manner that ensures they reduce the level of risk posed by the hazard(s) to a degree anticipated by the risk analysis; and

- the level of risk posed by the hazard(s) was determined accurately in the risk assessment;

the remaining risk while being acceptable may still result in what could be interpreted as failures in risk management.

An example of such a “failure” would be the interception of 8 live insects within a consignment of fruit, when the objective of the applied measure was to reduce the infestation rate to below 10 live insects per consignment. The residual risk in this instance would be 10 or less live insects detected per consignment making 8 live insects an acceptable level of infestation.

The residual risk information then becomes the basis for developing a monitoring protocol that may, for instance, interpret interception data to determine if risk thresholds are being exceeded. The residual risk information also ensures the risk management decision maker understands the nature of the risk remaining should the measures achieve their objectives.

Should monitoring activities then determine that the risk threshold has been exceeded for
any particular hazard or group of hazards; either the risk analysis can be reviewed to determine what aspects of the risk(s) or management option(s) have altered or were assessed incorrectly, or the implementation audited to ensure adequate compliance.

1. Residual Assessment

1.1 Objective of measure(s)

To effectively manage the risks of *Aspidiotus destructor* (coconut scale), phytosanitary measure(s) would need to ensure that with 95% confidence not more than 0.5% of the units in any given consignment of eggplant fresh fruit are infested with the scale when given a biosecurity clearance into New Zealand.

1.2 Expected performance of measure(s)

A contamination level of less than 0.5% of the units in any given consignment of eggplant fresh fruit with *Aspidiotus destructor* (coconut scale) will be achieved with 95% confidence if a 600 sample randomly collected from a homogenous lot of eggplant fresh fruit is visually inspected and no live *Aspidiotus destructor* (coconut scale) life stages are found.
5. **Documentation and Record Keeping**

The principle of transparency of the SPS Agreement (1994) requires that contracting parties should, on request, make available the rationale for sanitary or phytosanitary requirements. As a prerequisite, the underlying risk analysis should be sufficiently documented. Complete and careful documentation is also a prerequisite to implementing an effective and efficient review process for the risk analysis.

When documenting a particular analysis, the entire process from project initiation to the close-out reporting should be sufficiently documented so that the sources of information and rationale for management decision can be clearly demonstrated.

5.1 **References, Editorial Guidelines and Terminology**

The following aspects of the documentation process are specified here to ensure a degree of consistency is maintained within the risk analysis work program. The *MAF Style Guide* should be consulted to ensure all other aspects of documentation are also compliant with MAF requirements.

5.1.1 **Referencing**

Critical epidemiological observations that are the key to the analytical process should be attributed to primary sources. Where a number of references are cited in support of a particular point, the analyst should ensure that they are all based on independent studies. That is, the analyst should not cite several references that are all based on the same, single primary source.

5.1.2 **Citing references**

The accuracy of references is the responsibility of the author, and they must be verified against the original article. Ensure that all articles cited in the text are included in the bibliography and vice versa. Where possible, avoid using abstracts or web sites as references. Do not use unpublished observations, personal communications, or articles in press unless they exist in written form and are placed on an appropriate file in MAF. They should all be cited as personal communications.
5.1.3 Editorial guidelines

MAF Corporate Style Guide should be used for all citations and references included in the risk analysis document(s). The following editorial guidelines must also be followed:

i) Numbers

When a number is followed by a unit of measurement, it must be printed as a numeral. Otherwise, numbers greater than ten are generally printed as numerals, whereas words may be used for small numbers, at the beginning of a sentence, or when clarity requires it. A decimal point must always be preceded by a numeral, e.g., “0.5”, not “.5”.

ii) Quantities

All measurements should be reported in S.I. units or their decimal multiples, unless it is normal practice in a discipline to use derivatives, e.g., the international unit and the curie. Temperatures should be given in degrees Celsius. Attention is drawn to New Zealand Standard 6501, which contains the recommended S.I. units.

iii) Dates

Dates should take the form “25 May 2000” in the text but they can be abbreviated in tables and figures. Use the 24 hour clock for times of day.

iv) Abbreviations

Abbreviations should not be used if they are in any way ambiguous. They should only be used where they are in common use in English, standard SI form, or commonly accepted in a discipline. Non-standard abbreviations should be listed in a “Glossary of Abbreviations”, and their meaning must be clearly evident or explained when they are first introduced. For international units, “IU” should be used; “U” should be used for enzyme activity. Units of length, weight and volume should be given in lower case (e.g. kg, mg/l). Abbreviations for chemical elements, SI units, contractions and suspensions in common use (including country names such as USA, UK and NZ, but excluding “e.g.” and “i.e.”) are not followed by stops; other suspensions generally are (e.g. pers. comm.). Latin terms and their abbreviations that are now in common use in the scientific literature such as “ad libitum” “in vivo”, “in vitro”, “e.g.”, “i.e.” and “et al” are not italicised. Probability values are given in the form “p=0.003” (lower case, no spaces, to 2 or 3 decimal places only) and standard deviations, standard errors, standard errors of means and least significant differences given as SD, SE, SEM and LSD, respectively.
Manuscripts should conform to internationally recognised codes of nomenclature (e.g. The International Code of Zoological Nomenclature, International Code of Nomenclature of Bacteria, and the International Code of Botanical Nomenclature). All biota should be identified by their scientific names when the English term is first used, with the exception of common domestic animals. Generic and specific names should be italicised. Names of organisms should be given in full when used in the title and when first used in the text; after first use, generic names should be abbreviated as far as possible without causing confusion.

5.1.4 Terminology

Unless stated otherwise in the glossary included in these procedures (Chapter 6) or in any generic MAF glossary policy document, the terminology outlined by the relevant standard setting bodies, the Terrestrial Animal Health Code for animal health and ISPM No. 5: Glossary for plant health must be used. The coining of new terms should be avoided. Each risk analysis should have a glossary of terms at the beginning of the document, including at the very least, the definitions for the four terms that result in most confusion: risk, risk analysis, risk assessment and risk management.

Care must be exercised when using various terms to estimate or describe risk. As discussed in Section 2.1, various WTO Panels and Appellate Bodies have emphasised the importance of the correct use of terms such as likelihood and potential. Most biosecurity risk assessments are concerned with evaluating the likelihood of entry, establishment or exposure of an organism or disease, as well as the associated potential biological and economic consequences. It is not sufficient to conclude that there is a possibility of entry, establishment or exposure. Instead the likelihood, which may be expressed qualitatively or quantitatively, must be evaluated. Similarly, as the ordinary meaning of “potential” relates to possibility, the likelihood of possible consequences must be evaluated. For this reason it is important to use appropriate terms when describing a risk (Table 5.1).

<table>
<thead>
<tr>
<th>Term</th>
<th>The Concise Oxford Dictionary definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>When</td>
<td>expressing</td>
</tr>
</tbody>
</table>
### Likelihood:

#### a) Terms to avoid
- **Chance**: Past of can, where can means to be potentially capable of
- **Could**: Expressing a possibility based on a condition not fulfilled
- **Might**: When used as a noun means possibility
- **Potential**: a thing that may exist or happen
- **Possibility**: that is likely to happen; whatever is likely

#### b) Acceptable term
- **Chances**: in its plural form chance indicates a probability
- **Likelihood**: probability; the state or fact of being likely
- **Likely**: probable; such as well might happen or be true; to be reasonably expected the likelihood of something happening;
- **Probability**: mathematically it is defined as the extent to which an event is likely to occur, measured by the ratio of the favourable cases to the whole number of cases possible.
- **Probable**: May be expected to happen or prove true; likely
- **Would**: To express probability (I guess she would be over 50 by now); past of Will: expressing a wish, ability, capacity, probability or expectation.

### Terms used as adjectives to qualify likelihood estimates:
- **Average**: The usual amount, extent, rate
- **Extremely**: Outermost, furthest from the centre; situated at either end; utmost; the highest or most extreme degree of anything
- **High**: Extending above the normal or average level
- **Highly**: In a high degree
- **Less than average**: Less than average, coming below the normal level
- **Not worth considering**: Not worth considering; insignificant
### 5.2 Records Management

Sound records management practices are not only required to fulfil New Zealand’s domestic legislative requirements and meet international obligations, but also to provide a readily accessible information recall system that can act as an information resource for future and ongoing work and ensure that issues identified during the development of a risk analysis are recorded and directed to the appropriate business group for action or consideration.

MAF has a number of policies and standards for record keeping and document management that have been developed from relevant New Zealand legislation, including the Copyright Act 1994 e.g. MAF data and Document Management Policy, MAF Record keeping Policy, MAF Record Retention and Disposal Policy. Staff should also be aware of acceptable practice under these policies and such policies must be taken into consideration when developing record management practices within the risk analysis group.

#### 5.2.1 Process for records management

The procedural recommendations for this project covers records management associated with the production of import risk analyses after the notification of the final risk analysis. The three main parts of this process serve to ensure that:

1) Hazard information databases are updated appropriately;
2) Literature records referred to by the risk analysis are complete;
3) All related files or files developed during the project are complete;
4) Other groups or process owners are informed of risk analysis outputs relevant to their work area.

5.2.2 Updating hazard information in databases

Ensure the hazard information database(s) are updated as appropriate with the relevant hazard information developed during the risk analysis project.

5.2.3 Updating referenced literature records

Full-text references and citations should be stored in accordance with current MAF policies. As a guide references and citations should be held as a single unit until the project has been completed. After project completion references and citations relevant to particular organisms and diseases and of potential use in other projects should be stored for easy retrieval by future projects.

5.2.4 Ensure related files are complete

All documents related to a project should be easily recalled as a unit. Ensure that all documents relating to the risk analysis project are filed in either the electronic or the hardcopy files established at the initiation of the project. Such project-related records or documents include project planning documents, emails and other correspondence, references, submissions, drafts and final risk analysis documents. In the MAF electronic document management system all documents should be flagged with the project name.

Ensure that the following are updated as appropriate both during the project and on completion of the project:
- Check List, detailing progress of a single project and kept in the project file;
- Contractors and Reviewers Folder, containing a record of external reviewers and contractors used for risk analysis projects;
- Risk Analysis Tracking Log, the electronic file that is used to monitor progress of all projects across the risk analysis group.

The completed risk analysis document(s) should be published on the MAF website as pdf files and remain on the website indefinitely or until revised. The MAF Information Bureau should be notified for inclusion in their library catalogue. A hardcopy of risk analysis
documents should be placed in the risk analysis group library collection for easy access by Biosecurity New Zealand staff.

The availability of risk analysis documents, including the Review of Submissions document, should be advertised, such as in the Biosecurity magazine and on the MAF website. Organisations and individuals that made a submission to the project should be notified individually as detailed in Chapter 3.

5.2.5 **Ensure notifications are completed** The following groups with MAF should be notified as appropriate on the outcomes of the risk analysis project:

- **BNZ Science Strategy Group**, on potential science research or information needs identified during the project;
- **BNZ Biosecurity Standards Group**, on the outcomes of the risk analysis relevant to the development of operational or regulatory standards;
- **BNZ Post-Clearance Directorate**, on the outcomes of the risk analysis relevant to the management of surveillance, incursion response or pest management activities.
- **BNZ Border Monitoring Group**, on the outcomes of the risk analysis relevant to the monitoring of border activities.

There may also be other groups within MAF that, depending on the scope of the risk analysis project, may also need to be notified of the outcome or aspects of the outcomes of the project. These other groups include the Biosecurity New Zealand Exports Team, the New Zealand Food Safety Authority, and the various policy and strategy groups with Biosecurity New Zealand and MAF.
6. **Glossary**

The following terms have been adopted for use in risk analysis in MAF or have either been adapted from existing international standards or have come from an existing international standard and have been adopted as the official risk analysis definition.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Area</strong></td>
<td>An officially defined country, part of a country or all or part of several countries, as identified by the competent authorities. (SPS agreement 1994(^{24}))</td>
</tr>
<tr>
<td><strong>Biosecurity</strong></td>
<td>The exclusion, eradication or effective management of risks posed by pests and diseases to the economy, environment and human health.&quot; (Biosecurity Strategy 2003(^{25}))</td>
</tr>
<tr>
<td><strong>BNZ</strong></td>
<td>Biosecurity New Zealand</td>
</tr>
<tr>
<td><strong>BSA</strong></td>
<td>Biosecurity Act 1993</td>
</tr>
<tr>
<td><strong>Commodity</strong></td>
<td>A good being moved for trade or other purposes. Packaging, containers, and craft used to facilitate transport of commodities are excluded unless they are the intended good.</td>
</tr>
<tr>
<td><strong>Consequences</strong></td>
<td>The adverse effects or harm as a result of entry and establishment of a hazard, which cause the quality of human health or the environment to be impaired in the short or longer term (DOE, 1995(^{26})).</td>
</tr>
<tr>
<td><strong>CTO</strong></td>
<td>Chief Technical Officer under the Biosecurity Act 1993</td>
</tr>
<tr>
<td><strong>Disease</strong></td>
<td>A finite abnormality of structure or function with an identifiable pathological or clinicopathological basis, and with a recognizable syndrome of clinical signs. Its cause may not be known, or may be from infection with a known organism. (Blood &amp; Studdert 1990(^{27}))</td>
</tr>
<tr>
<td><strong>Ecosystem</strong></td>
<td>A dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a</td>
</tr>
</tbody>
</table>

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\(^{26}\) DOE, 1995

\(^{27}\) Blood & Studdert 1990
Entry (of a organism or disease) Movement of an organism or disease into a risk analysis area.

Environment (Biosecurity Act 1993) Includes:

(e) Ecosystems and their constituent parts, including people and their communities; and

(f) All natural and physical resources; and (g) Amenity values; and (h) The aesthetic, cultural, economic, and social conditions that affect or are affected by any matter referred to in paragraphs (a) to (c) of this definition

Establishment Perpetuation, for the foreseeable future, of an organism or disease within an area after entry.

Exposure The condition of being vulnerable to adverse effects

FAO Food and Agriculture Organization, United Nations.

Hazard Any disease or organism that has the potential to produce adverse consequences

Hitchhiker Organism An organism that is carried by or with a commodity and is not a pest of the commodity.

Import Health Standard (IHS) A document issued under section 22 of the Biosecurity Act 1993 by the Director General of MAF, specifying the requirements to be met for the effective management of risks associated with the importation of risk goods before those goods may be imported, moved from a biosecurity control area or a transitional facility, or given a biosecurity clearance

Note: An import health standard is also an “import permit” as defined under the IPPC

IHR International Health Regulations, World Health Organization.

Import risk analysis A process to identify appropriate risk-mitigating options for the development of import health standards. These risk analyses can focus on an organism or disease, a good or commodity, a

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28 Convention on Biological Diversity 1992
pathway, or a method or mode of conveyance such as shipping, passengers or packaging.

**Inanimate object** An object or material not of plant or animal origin on which organisms or diseases can be conveyed. For example, containers, bricks, plastics, and metal

**IPPC** International Plant Protection Convention (1997), FAO

**MAF** New Zealand Ministry of Agriculture and Forestry

**Measure** A measure may include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of risk goods, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to biosecurity

**MoH** New Zealand Ministry of Health

**Natural and physical resources** (Biosecurity Act 1993) Means:

(i) Organisms of all kinds; and  

(j) The air, water, and soil in or on which any organism lives or may live; and  

(k) Landscape and land form; and  

(l) Geological features; and  

(m) Structures of all kinds; and  

(n) Systems of interacting living organisms and their environment

**Notifiable Organism** An organism that has been declared under the Biosecurity Act (1993) to be a notifiable organism for New Zealand or a region or regions of New Zealand.

**NZFSA** New Zealand Food Safety Authority

**OIE** World Organisation for Animal Health

**Organic material** (Biosecurity Act 1993) Subject to subsection (2) of this section, means any material that is or contains:

(a) Material derived from an organism; or  

(b) An excretion or secretion of an organism, (whether or not it
also contains material derived from a human being or contains the secretions of a human being)

Subsection 2: No goods are an organic material by virtue only of being or containing cardboard, coal, paper, petroleum oil, or a substance derived from coal or petroleum oil.

Organism (Biosecurity Act 1993)
(a) Does not include a human being or a genetic structure derived from a human being:
(b) Includes a micro-organism:
(c) Subject to paragraph (a) of this definition, includes a genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of an entity):
(d) Includes an entity (other than a human being) declared by the Governor-General by Order in Council to be an organism for the purposes of this Act:
(e) Includes a reproductive cell or developmental stage of an organism:
(f) Includes any particle that is a prion.

Organism consequence assessment
A process to measure the level and nature of the consequences of an organism or disease that has established in New Zealand. An organism consequence assessment is most often used to inform response and/or pest management programs within New Zealand.

Pathway
Any means that allows the entry or spread of a potential hazard

Pest
Any species, strain or biotype of plant, animal or pathogenic agent, injurious to plants or animals (or their products) or human health or the environment.

Note: the definition given for “pest” here is different from that used in the Biosecurity Act 1993 “an organism specified as a pest in a pest management strategy”. The Biosecurity Act 1993 deals more with “risks” and “risk goods”

Pest risk assessment
A process to measure the level and nature of biosecurity risk posed by an organism. A pest risk assessment can be used to inform biosecurity surveillance activities or identify pests of high risk to New Zealand.

Residual Risk
The risk remaining after risk management requirements have been implemented

Risk
The likelihood of the occurrence and the likely magnitude of the
**Risk analysis**  The process composed of hazard identification, risk assessment, risk management and risk communication.

**Risk analysis area**  The area in relation to which a risk analysis is conducted.

**Risk assessment**  The evaluation of the likelihood, and the biological and economic consequences, of entry, establishment, or exposure of an organism or disease.

**Risk good**  (Biosecurity Act 1993) Means any organism, organic material, or other thing, or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may:

(a) Cause unwanted harm to natural and physical resources or human health in New Zealand; or

(b) Interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms.

**Risk management**  The process of identifying, selecting and implementing measures that can be applied to reduce the level of risk.

**Risk threshold**  The upper limit of acceptable residual risk.

**Route of introduction**  The recognized entry categories by which an organism could be introduced into a defined country, part of a country or all or part of several countries.

**Spread**  Expansion of the geographical distribution of a potential hazard within an area.


**Unwanted organism**  (Biosecurity Act 1993) Means any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health; and (a) Includes:

(i) Any new organism if the Authority has declined approval to import that organism; and

(ii) Any organism specified in the Second Schedule of the Hazardous Substances and New Organisms Act 1996; but

(b) Does not include any organism approved for importation under the Hazardous Substances and New Organisms Act 1996, unless:

(i) The organism is an organism which has escaped from a
containment facility; or

(ii) A chief technical officer, after consulting the Authority and taking into account any comments made by the Authority concerning the organism, believes that the organism is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health.
Appendix 1: Domestic and International Obligations

The following appendix provides information on the obligations afforded by New Zealand’s domestic and international legislative framework for the provision of risk analysis and risk management activities in biosecurity.

AP1.1 A Summary of the Legal Burden of Proof

The following summary has been extracted from a report produced as part of a project to determine the “legislative burden of proof” (LBOP) for import health standards and their related risk analyses. The project defined the LBOP as the level of risk analysis required of MAF under both domestic and international law to provide robust assessment of the risk posed by imported goods and covering the potential to inadvertently import pests and diseases with those goods. The report summarised the domestic statutory and case law and international law which determines this LBOP. The LBOP relevant to the development of risk analyses (as opposed to the development of import health standards) is presented here.

This project found that MAF must do the following with regard to undertaking risk analyses in support of the development of import health standards.

1. MAF must:

- have regard to the following mandatory matters:
  - the likelihood that goods being assessed will bring organisms into New Zealand;
  - the nature and possible effect on people, environment and economy of those organisms;
  - New Zealand’s international obligations, including: the SPS Agreement; the Convention on Biological Diversity; and the International Health Regulations;
- consult appropriately by treating it as more than mere notification, approaching it with an open mind, and waiting till the consultation process has finished before making a decision;
- act in accordance with natural justice;
- ensure that SPS measures comply with the SPS agreement by being transparent, consistent, scientifically based and least trade restrictive;
- allow its SPS measures to be determined by New Zealand’s “appropriate level of protection”, not the other way around;
- publish SPS measures for international availability and internationally advertise occasions when it is considering bringing in new measures that differ from
international standards;

- **maintain an enquiry point** for international enquiries about the contents of risk analyses;
- ensure that SPS measures **comply with the Convention on Biological Diversity** by ensuring that as far as possible and appropriate that measures prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;
- ensure that SPS measures **comply with the International Health Regulations** by:
  - considering the need for deratting, disinfection, disinsection or decontamination of goods
  - considering the need to control the discharge from ships of sewage, refuse and ballast water
  - considering the need to **supervise unpacking of cargo** - complying with **standing recommendations** of the World Health Organization.

II  **MAF must not do the following:**

- make **errors of fact**;
- make decisions that are **ultra vires** (“beyond the power”) with regard to the empowering legislation;
- act against the **legitimate expectation** of parties to treat similar cases in a similar manner, while recognising that policy is allowed to evolve over time; involve people in decisions who have a **bias** (such as a financial or other personal interest in the outcome, or a personal prejudice against a party or a party’s case, or having predetermined the issue before all the relevant information is available);
- make decisions that are **unreasonable** by, for example, there being no rational basis upon which to draw certain conclusions upon which a decision depends;
- adopt **different levels of sanitary protection** for the same risk resulting in discrimination or a disguised restriction on international trade.

III

While not technically required, MAF should **record** all details of the risk analysis and decision-making process. Though MAF is technically able to rely on retrospective affidavits to document what happened within the decision making process there is no guarantee that the court will accept these affidavits in their entirety.
There is no legal requirement for MAF to do the following (though there may often be technical or other reasons to do some of these things):

- **reach agreement** with all submitters or delay a decision until all matters that the submitter considers are outstanding have been resolved;
- provide a **detailed response** to all submitters;
- Always, in every case, **identify and assess all organisms** associated with a commodity to be imported;
- **attain perfect or absolute consistency** across all SPS measures;
- **Prove to a WTO dispute settlement body that a blanket SPS measure is consistent with the SPS Agreement**, unless a complainant country is able to raise a *prima facie* case that it is not consistent;
- **Publish risk analyses for an international audience** (though there should be an enquiry point to provide these on request).

Any person seeking to challenge MAF decisions around import health standards in the domestic courts does not have a statutory right of appeal. Such a challenge would need to be through an application to the High Court for judicial review on the grounds of: (i) illegality; ii) unfairness; or (iii) unreasonableness. Only under the ground of unreasonableness can the court question the merits of a decision and even then under very limited circumstances. Otherwise the court is limited to ensuring the decision-making process was valid.
AP1.2 Domestic Legislation

The following is a summary of the domestic legislation relevant to undertaking risk analyses for the development of import health standards.

1.2.1 Biosecurity Act (1993)

The Biosecurity Act (1993) (BSA) is “an Act to restate and reform the law relating to the exclusion, eradication, and effective management of pests and unwanted organisms”. The purpose of Part III of the Biosecurity Act (1993) is “to provide for the effective management of risks associated with the importation of risk goods”. MAF is the Ministry responsible for the administration of the BSA and its Director-General is responsible for, amongst other things, issuing import health standards (IHS), which specify the requirements to be met before risk goods may be imported.

Risk goods are defined in the BSA as any organism29, organic material1, or other thing, or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may:

i) Cause unwanted harm to natural and physical resources29 or human health in New Zealand; or

ii) Interfere with the diagnosis, management, or treatment, in New Zealand, of pests29 or unwanted organisms29

All goods imported into New Zealand must be given a biosecurity clearance by an inspector who must be satisfied that the goods are either not risk goods or, if they are, that they comply with the requirements specified in an IHS and are accompanied by appropriate documentation. If the risk good is an organism the inspector must be satisfied that it does not display any signs or symptoms of harbouring unwanted organisms. An unwanted organism is any organism that a Chief Technical Officer (CTO) believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health.

29 These terms are defined in Appendix 2.
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The BSA is not concerned with the deliberate importation of new organisms. The relevant legislation, implemented by the Environmental Risk Management Authority (ERMA), is the Hazardous Substances and New Organisms Act (1996) (HSNO). Its purpose is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. ERMA assesses and grants approvals for new organisms. Once an approval is granted an IHS, issued under the BSA, must be developed before new organisms can be imported.

MAF Biosecurity’s policy is that the all new and revised IHSs must be based on a risk analysis. There are no obligations in the BSA to issue an IHS. If the measures that could be applied when importing risk goods are insufficient to effectively manage the risks, an IHS will not be issued.

The BSA specifies that a CTO must have regard to the following matters before recommending that an IHS be issued:

i) The likelihood that the (risk) goods specified in an IHS may bring organisms into New Zealand:

ii) The nature and possible effect on people, the New Zealand environment, and the New Zealand economy of any organisms that the goods specified in an IHS may bring into New Zealand:

iii) New Zealand's international obligations:

iv) Other matters that the CTO considers relevant to the purpose of Part III of the BSA.

It is important to appreciate the extent to which a CTO may take these matters into account, particularly those relating to the economy and the environment. Under BSA the environment includes amenity values and aesthetic, cultural, economic, and social conditions. However, the CTO can only take such matters into account to the extent that they are affected by “any organisms”. As a result the CTO may not consider those affects not related to an organism, for example the impact of cheaper goods on a particular industry or the economy generally.

The BSA requires a CTO to consult with stakeholders, including other government departments, before issuing an IHS unless it needs to be issued or amended urgently. Normally the consultation would involve a risk analysis in the first instance followed by an IHS.
1.2.2 Agricultural Compounds and Veterinary Medicines Act (1997)

The Agricultural Compounds and Veterinary Medicines Act (1997) regulates the importation, manufacture, sale and use of agricultural compounds. One of its main purposes is to prevent or manage the risks\(^{30}\) associated with the use of agricultural compounds to trade, animal welfare and agricultural security\(^{31}\). The definition of an agricultural compound is very broad and, in relation to animals, includes any substance or biological compound used in the management of animals, for example for the purpose of treating, maintaining the productivity or fulfilling special nutritional requirements. It includes any veterinary medicine and is broad enough to include feedstuffs such as grains and meals. Nothing in this Act affects the requirements of BSA in relation to any agricultural compound. As a result an IHS must be developed for those agricultural compounds that constitute risk goods under the BSA.

1.2.3 Food Act (1981) and Food Regulations (1984)

The Food Act (1981) requires that food prepared, packed or sold within New Zealand be fit for human consumption. In addition imported food must not be contaminated with pesticides or animal remedies greater than those specified in the Codex Alimentarius. Food Standards, deemed to be regulations, may be issued by the Minister. They aim to protect public health with a desire to avoid unnecessary restrictions on trade, maintain consistency with international food standards and fulfil international obligations. The standards may apply to a food’s composition (contaminants, residues, additives or other substances) and microbiological status. A food may be declared to be a prescribed food for the purpose of importation in order to ensure the food satisfies certain requirements to minimise the risk of illness. Prescribed foods are listed in the Mandatory Food Standard (1999) and must be issued with a clearance before they are imported. Consultation with interested persons

\(^{30}\) Risk includes any costs or potential costs

\(^{31}\) "Agricultural security" means the exclusion, eradication, and effective management of--

1) Pests:

a) Includes any unwanted living organism including micro-organisms, pest agents, and any genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of an entity) that may affect plants, animals, or raw primary produce; and

b) Includes any entity declared to be a pest for the purposes of this Act

c) Does not include—

i) Any human being or living organism which affects only human beings; and

ii) Any living organism declared not to be a pest for the purposes of this Act

2) Unwanted organisms under the Biosecurity Act 1993
must be undertaken before a food standard is issued. Certain foods may be prohibited from importation.

The Food Regulations (1984) prescribe labelling requirements; establish standards defining what constitutes various foods such as fresh, chilled or frozen meat, fresh or chilled fish, cheese and eggs, standards for additives and the protection and safety of food. They prohibit the importation of low acid canned food, cheese, clams, oysters, scallops, mussels, prawns, shrimps or frogs legs unless these foods comply with the relevant provisions of the Food Act and Food Regulations.

1.2.4 Human Assisted Reproductive Technology Act (2004)

The Human Assisted Reproductive Technology Act (2004) (HART) covers the importation of gametes and embryos. HART allows people to import their own gametes (sperm and eggs) for use in their own fertility treatment. HART does not currently allow the importation of donated sperm from another country to NZ for use in fertility treatment. The Advisory Committee on Assisted Reproductive Technologies (ACART), which has recently been established, will be developing guidelines and consulting on this issue and until that has occurred this practice is not allowed. HART prohibits the importation of gametes and embryos which have been formed by a prohibited action under the Act (e.g. reproductive cloning).

1.2.5 Human Tissue Act (1964)

The current Human Tissue Act (1964) (HTA) does not place restrictions on the import or export of human bodies, body parts, organs or tissue. The only restrictions are those that are imposed by the airlines (around packaging etc). Currently human tissue may be imported for a number of reasons, including: teaching/education, research, audit, and transplantation. The use of imported whole organs for transplantation (only from Australia at the moment) is covered by the Australia New Zealand Intensive Care Association guidelines. The HSNO Act provides scrutiny of the importation of genetically modified cells.
AP1.3 International Agreements and Standards

The following is a summary of international agreements and standards relevant to undertaking risk analyses for the development of import health standards.

1.3.1 WTO SPS Agreement (1995)

1.3.1.1 Basic rights and obligations

As a member of the World Trade Organization, New Zealand has certain rights and obligations. Under the Agreement on the Application of Sanitary and Phytosanitary Measures (the so-called “SPS Agreement” (1995)) member countries can employ measures to protect human, animal or plant life or health provided that these measures are not applied arbitrarily, do not result in discrimination between members where similar conditions prevail or constitute a disguised restriction on trade. Members are obliged to apply these measures only to the extent necessary and to base them on scientific principles, in particular risk assessment techniques developed by relevant international organisations. In addition, measures should be based on international standards where they exist. However, if there is a scientific justification that these standards do not achieve an appropriate level of protection, measures that provide a higher level of protection may be

32 Any measure applied:

(a) to protect animal or plant life or health within the territory of an importing country from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

(b) to protect human or animal life or health within the territory of an importing country from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

(c) to protect human life or health within the territory of an importing country from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

(d) to prevent or limit other damage within the territory of an importing country from the entry, establishment or spread of pest.

These measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.
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applied. The relevant international standards for animal health and zoonoses are the Terrestrial Animal Health Code\textsuperscript{33} and Aquatic Animal Health Code, for food safety issues it is the Codex Alimentarius Commission, while for plant health it is ISPM No. 2 – Guidelines for Pest Risk Analysis and ISPM No. 11 Pest Risk Analysis for Quarantine Pests, Including Analysis of Environmental Risks and Living Modified Organisms.

1.3.1.2 Risk assessment

The SPS Agreement (1995) effectively defines two types of risk assessments, disease or pest risk assessments and food safety risk assessments.

i) Disease or pest risk assessments cover:

a) animal or plant health risks arising from pests or diseases, or

b) human health risks from diseases carried by animals, plants or their products, or

c) human health risks arising from pests

These risk assessments evaluate the likelihood of entry, establishment or spread of a disease or pest within the territory of an importing country according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences (SPS Agreement (1995)). There are three steps involved for these types of assessments (WTO (1998a)\textsuperscript{34}, WTO (1998b)\textsuperscript{35}). They must:

- identify the pests or diseases whose entry, establishment or spread a Member wants to prevent within its territory, as well as the potential biological and economic consequences associated with the entry, establishment or spread of these pests or diseases;

\textsuperscript{33} OIE. Terrestrial Animal Health Code, Office International des Epizooties, 2001


• evaluate the likelihood of entry, establishment or spread of these pests or diseases, as well as the associated potential biological and economic consequences; and

• evaluate the likelihood of entry, establishment or spread of these pests or diseases according to the SPS measures that might be applied

ii) Food safety risk assessments cover:

a) human or animal health risks arising from foods, beverages or feedstuffs

This type of risk assessment evaluates the potential for adverse effects on human or animal health from the presence of disease causing organisms, additives, contaminants or toxins in foods, beverages or feedstuffs (SPS Agreement (1995))

1.3.1.3 Factors to take into account in a risk assessment

For both types of assessments the following factors must be taken into account (SPS Agreement (1995)):

• available scientific evidence;
• relevant processes and production methods;
• relevant inspection, sampling and testing methods;
• prevalence of specific diseases or pests;
• existence of pest- or disease-free areas and areas of low pest or disease prevalence;
• the existence of eradication or control programs;
• relevant ecological and environmental conditions;
• quarantine or other treatment.

1.3.1.4 Economic factors to consider in a risk assessment

When undertaking a disease or pest risk assessment the relevant economic factors to consider are (SPS Agreement (1995)):

• the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;
• the costs of control or eradication;
• the relative cost-effectiveness of alternative approaches to limiting risks.
1.3.1.5 Levels of risk to be considered

While a disease or pest risk assessment requires an evaluation of the likelihood of entry, establishment or spread of a pest or disease, and of the associated potential biological and economic consequences, a food safety risk assessment requires only the evaluation of the potential for adverse effects. Since the ordinary meaning of “potential” relates to possibility, not probability or likelihood, there appears to be a significant difference between the two types of risk assessment. However, it is important to bear in mind that the SPS Agreement requires that all risk assessments, whether they are pest or disease risk assessments or food safety risk assessments, should take into account techniques developed by the International Plant Protection Convention (IPPC), World Organisation for Animal Health (OIE) or Codex Alimentarius (Codex) (SPS Agreement (1995)). All of these organisations have developed standards that require that risk be expressed in terms of probability or likelihood, not possibility (OIE (2000); Codex (1997a)36, Codex (1997b)37. As a result it is not sufficient to conclude that there is a possibility of a risk arising. An evaluation of the likelihood of the risk, which may be expressed qualitatively or quantitatively, must be undertaken.

Regardless of which type of assessment is undertaken, the risk evaluated must be ascertainable. Since it is very difficult or perhaps impossible to prove that a risk does not exist, there will always be a degree of uncertainty. In many cases such a risk may be theoretical rather than ascertainable. Theoretical risks are not the types of risks to be considered in a risk assessment (WTO (1998a)38.

1.3.1.6 Evaluating disease or pest risks individually

A risk assessment must identify risk on a disease-specific basis, that is, it has to identify the risk for any given disease of concern separately, not simply address the overall risk related to the combination of all diseases of concern. However, some of the elements of a risk assessment related to one disease might be used as part of the assessment for another disease, so that disease-by-disease assessments may overlap. As a result, as soon as there is a disease specific assessment for one disease of concern, on which the sanitary measure as a whole can be based, there might be no more need to assess the risks related to the other

1.3.1.7  Evaluating disease or pest risks according to the measures that might be applied

The SPS Agreement requires that a disease or pest risk assessment must evaluate the likelihood of entry, establishment or spread of disease according to the SPS measures which might be applied (SPS Agreement (1995); WTO (1998a)\textsuperscript{28}; WTO (1998b)\textsuperscript{29}). Although a similar evaluation of measures that might be applied to food safety is not mentioned, Codex does require an evaluation “in light of the results of risk assessment”. As a result, regardless of the type of risk assessment, it is not acceptable to simply identify a range of measures that might reduce the risks. There must be a rational relationship between the measures and the risk assessment so that the results of the risk assessment support the measures. Each measure must be evaluated either singly or in combination to determine its relative effectiveness in reducing the overall disease risk (WTO (1998a)\textsuperscript{30}).

1.3.1.8  Striving for objectivity in a risk assessment

While a risk assessment inevitably includes subjective elements there are a number of factors within the SPS Agreement, including “risk assessment techniques developed by the relevant international organisations”, “available scientific evidence”, “scientific principles” and “sufficient scientific evidence”, which should be used when evaluating likelihood. The level of objectivity must be such that a reasonable confidence in the evaluation, particularly in the nominated levels of risk, is achieved (WTO (2000)\textsuperscript{41}).

1.3.1.9  Dealing with insufficient information (uncertainty)

Sanitary or phytosanitary measures should not be more trade-restrictive than required to

\textsuperscript{39} WTO. Report of the Panel. Australia – Measures Affecting Importation of Salmon. WT/DS18/R (98-2258), 1998b


\textsuperscript{41} WTO Report of the Panel. Australia – Measures Affecting Importation of Salmon. Recourse to Article 21.5 by Canada. WT/DS18/RW (00-o542), 2000
achieve the appropriate level of protection\textsuperscript{42}, taking into account technical and economic feasibility. Where scientific evidence is insufficient, measures may be provisionally adopted on the basis of available pertinent information. However, additional information should be sought to allow a more objective risk assessment within a reasonable period of time (SPS Agreement (1995)). While the so-called “Precautionary Principle” \textsuperscript{43} has not been written into the SPS Agreement, it finds reflection in Article 5.7. Its status in international law is the subject of debate and considered by some to be more an approach than a principle. Nevertheless, the “Precautionary Principle” does not over-ride the requirements of the SPS Agreement that sanitary or phytosanitary measures must be based on a risk assessment that takes account of available scientific evidence (WTO (1998c)\textsuperscript{44}).

\textbf{1.3.1.10 Notification}

WTO member countries are required to notify other member countries when they propose to introduce a new measure or make changes to an existing measure, particularly where the measure is not substantially the same as an international standard, guideline or recommendation. Except in urgent circumstances, sufficient time should be allowed for comments to be taken into account, amendments to be introduced and exporters to adapt. Where circumstances are urgent member countries are still required to notify with a brief indication of the objective and the rationale of the measure, including the nature of the urgency, and allow other members to comment and take them into account (SPS Agreement (1995)).

\textbf{1.3.2 International Terrestrial Animal and Aquatic Animal Health Codes}

The \textit{Terrestrial Animal Health Code} and \textit{Aquatic Animal Health Code} of the \textit{World Organisation for Animal Health} (OIE) are the standards referred to in the SPS Agreement

\textsuperscript{42} The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory. \textit{NOTE: Many Members otherwise refer to this concept as the “acceptable level of risk”}.

\textsuperscript{43} Principle 15 of the Rio Declaration on Environment and Development (1992) is often referred to as the Precautionary Principle. It states that “in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.

that apply to animal and zoonoses (OIE (2000a)\textsuperscript{45}; OIE (2000b)\textsuperscript{46}). These Codes\textsuperscript{47} aim to ensure the sanitary safety of international trade in animals (mammals, birds, bees and aquatic species) and animal products so as to avoid the transfer of disease-agents that are pathogenic for animals or humans. There is a separate chapter for each disease covered by these Codes detailing applicable sanitary measures. Each chapter lists the commodities that the OIE considers capable of transmitting the disease through international trade. Where a particular commodity is not listed it means that the OIE has not yet been able to develop a recommendation. This inconsistency creates a challenge for those managing the risks posed by trade. In situations where the OIE has not formulated recommendations and in those where stricter sanitary conditions may be warranted, a risk analysis needs to be carried out to determine the need for, and type of, sanitary measures that are appropriate. If OIE measures are applied there may be no need to conduct a risk analysis, at least as far as international obligations are concerned.

Import risk analysis is covered in Section 1.4 of the Aquatic Animal Health Code and Section 1.3 of the Terrestrial Animal Health Code. As both texts are closely similar, the following discussing focuses on the Terrestrial Animal Health Code only. Section 1.3 of that document (hereafter referred to as the Code) provides recommendations and guidelines for import risk analysis. It is divided into five sections: general considerations, guidelines for risk analysis, evaluation of veterinary services, zoning and regionalisation, and surveillance and monitoring of animal health.

According to the Code the principal aim of import risk analysis is to provide \textit{importing countries} with an objective and defensible method of assessing the disease risks associated with the importation of \textit{animals}, animal products, animal genetic material, feedstuffs, \textit{biological products} and \textit{pathological material}. The analysis should be transparent. This is necessary so that the \textit{exporting country} is provided with clear reasons for the imposition of import conditions or refusal to import.

The Code identifies four components of a risk analysis: hazard identification, risk assessment, risk management and risk communication and provides a list of terms and corresponding definitions.


\textsuperscript{47} The full text of Section 1.4, Import Risk Analysis, of the Terrestrial Animal Health Code is in appendix 4. Section 1.4 of the Aquatic Animal Health Code is being re-drafted to harmonise it with the Animal Health Code. Since it is expected to be essentially the same as the Animal Health Code it is not re-produced here.
1.3.2.1 Hazard identification

Hazard identification involves identifying pathogenic agents that could potentially produce adverse consequences associated with the importation of a commodity. To classify an agent as a hazard the following criteria need to be fulfilled:

- the agent must be appropriate to the species being imported, or from which the commodity is derived;
- it may be present in the exporting country;
- if present in the importing country it must be a notifiable disease or subject to control or eradication.

A risk assessment may be concluded if the hazard identification step fails to identify potential hazards associated with an imported commodity. If an importing country applies the appropriate sanitary standards recommended in the Code there is no need to conduct a risk assessment.

1.3.2.2 Risk assessment

Risk assessment is the process of evaluating the likelihood and biological and economic consequences of entry, establishment or spread of a pathogenic agent within the territory of an importing country. It consists of four inter-related steps:

i) Release assessment, which consists of estimating the likelihood of an imported commodity being infected or contaminated with a hazard and describing the biological pathway(s) necessary for that hazard to be introduced into a particular environment.

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48 Commodity means animals, products of animal origin intended for human consumption, for animal feeding, for pharmaceutical or surgical use or for agricultural or industrial use, semen, embryos/ova, biological products and pathological material.

49 The evaluation of the Veterinary Services, surveillance and control programmes and zoning and regionalisation systems are important inputs for assessing the likelihood of hazards being present in the animal population of the exporting country.

50 Notifiable disease means a disease listed by the Veterinary Authority, and that, as soon as detected or suspected, must be brought to the attention of the Veterinary Authority.
1.3.2.3 Risk management

Risk management is the process of deciding upon and implementing measures to achieve the importing country's appropriate level of protection, whilst at the same time ensuring that negative effects on trade are minimised. The objective is to manage risk appropriately to ensure that a balance is achieved between a country's desire to minimise the likelihood or frequency of disease incursions and their consequences and its desire to import goods and fulfil its obligations under international trade agreements. Four components are identified:

i) Risk evaluation, where the estimated risk is compared with the importing country's appropriate level of protection.

ii) Option evaluation, where measures are identified, evaluated and selected to effectively manage the risks in line with the importing country's appropriate level of protection.

iii) Implementation,

iv) Monitoring and review, where measures are audited to ensure that they achieve the results intended.

1.3.2.4 Risk communication

Risk communication is the process by which information and opinions regarding hazards and risks are gathered from potentially affected and interested parties during a risk analysis, and by which the results of the risk assessment and proposed risk management measures are communicated to the decision-makers and interested parties in the importing and exporting countries. It is a multidimensional and iterative process and should ideally begin at the start of the risk analysis process and continue throughout.
Standards developed under the *International Plant Protection Convention* (IPPC), namely *ISPM No. 2 Guidelines for Pest Risk Analysis*[^51], *ISPM No. 11 Pest Risk Analysis for Quarantine Pests, Including Analysis of Environmental Risks and Living Modified Organisms*[^52], and *ISPM No. 21 Pest risk analysis for regulated non-quarantine pests*[^53], provide details for the conduct of pest risk analysis (PRA) to determine if pests are quarantine pests. These standards describe the integrated processes to be used for risk assessment as well as the selection of risk management options. They also include details regarding the analysis of risks of plant pests to the environment and biological diversity, including those risks affecting uncultivated/unmanaged plants, wild flora, habitats and ecosystems contained in the PRA area.

Under these standards the objectives of a PRA are, for a specified area, to identify pests and/or pathways of quarantine concern to plant health and evaluate their risk, to identify endangered areas, and, if appropriate, to identify risk management options. Pest risk analysis (PRA) for quarantine pests follows a process defined by three stages:

**Stage 1** (initiating the process) involves identifying the pest(s) and pathways that are of quarantine concern and should be considered for risk analysis in relation to the identified PRA area.

**Stage 2** (risk assessment) begins with the categorization of individual pests to determine whether the criteria for a quarantine pest are satisfied. Risk assessment continues with an evaluation of the probability of pest entry, establishment, and spread, and of their potential economic consequences (including environmental consequences).

**Stage 3** (risk management) involves identifying management options for reducing the risks identified at stage 2. These are evaluated for efficacy, feasibility and impact in order to select those that are appropriate.

### 1.3.3.1 Stage 1: Initiating the PRA Process

[^51]: ISPM No 2. Guidelines for Pest Risk Analysis (ISPM No. 2). FAO 1996
There are generally two initiation points for a pest risk analysis:

i) the identification of a pathway, usually an imported commodity, that may allow the introduction and/or spread of quarantine pests

ii) the identification of a pest that may qualify as a quarantine pest.

Either can involve pests already present in the PRA area but not widely distributed and being officially controlled, and pests absent from the PRA area, since both are covered by the quarantine pest definition.

At the end of Stage 1, pests have been identified as potential quarantine pests, individually or in association with a pathway.

1.3.3.2 Stage 2: Pest Risk Assessment

Stage 1 has identified a pest, or list of pests (in the case of initiation by a pathway), to be subjected to risk assessment. Stage 2 considers these pests individually. It examines, for each, whether the criteria for quarantine pest status are satisfied:

"a pest of potential economic importance to the area\(^{54}\) endangered\(^{55}\) thereby and not yet present there, or present but not widely distributed and being officially controlled"

In doing so, the PRA considers all aspects of each pest and in particular actual information about its geographical distribution, biology and economic importance. Expert judgement is then used to assess the establishment, spread and economic importance potential in the PRA area. Finally, the potential for introduction into the PRA area is characterized. In characterizing the risk, the amount of information available will vary with each pest and the sophistication of the assessment will vary with available tools. For example, one country may have elaborate pest databases and geographical information systems; another may depend on books, printed soil maps, and climate maps. In some cases, virtually no information may be available, or research may be needed to obtain it. Assessments will be

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\(^{54}\) In this context, "area" should be understood to mean: "an officially defined country, part of a country, or all or part of several countries".

\(^{55}\) An "endangered area" should be understood to mean: "an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss".
limited by the amount of information available on the biology of a particular pest. Countries where the pest is present may provide available information for the country conducting the PRA, on request.

If the pest satisfies the definition of a quarantine pest, expert judgement should be used to review the information collected during Stage 2 to decide whether the pest has sufficient economic importance and introduction potential, i.e. sufficient risk, for phytosanitary measures to be justified. If so, proceed to Stage 3; if not, the PRA for the pest stops at this point.

1.3.3.3 Stage 3: Risk management

Pest risk management to protect the endangered areas should be proportional to the risk identified in the pest risk assessment. In most respects it can be based on the information gathered in the pest risk assessment. Phytosanitary measures should be applied to the minimum area necessary for the effective protection of the endangered area.

Appropriate measures should be chosen based on their effectiveness in reducing the probability of introduction of the pest. The choice should be based on the following considerations, which include several of the Principles of plant quarantine as related to international trade (ISPM No. 1):

- **Phytosanitary measures shown to be cost-effective and feasible** - The benefit from the use of phytosanitary measures is that the pest will not be introduced and the PRA area will, consequently, not be subjected to the potential economic consequences. The cost-benefit analysis for each of the minimum measures found to provide acceptable security may be estimated. Those measures with an acceptable benefit-to-cost ratio should be considered.
- **Principle of "minimal impact"** - Measures should not be more trade restrictive than necessary. Measures should be applied to the minimum area necessary for the effective protection of the endangered area.
- **Reassessment of previous requirements** - No additional measures should be imposed if existing measures are effective.
- **Principle of "equivalence"** - If different phytosanitary measures with the same effect are identified, they should be accepted as alternatives.
- **Principle of "non-discrimination"** - If the pest under consideration is established in

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56 ISPM No 1. Principles of Plant Quarantine as Related to International Trade (ISPM No. 1). FAO 1995
the PRA area but of limited distribution and under official control, the phytosanitary measures in relation to import should not be more stringent than those applied within the PRA area. Likewise, phytosanitary measures should not discriminate between exporting countries of the same phytosanitary status.

At the end of Stage 3, the appropriate phytosanitary measures concerning the pest or pathway have been decided. Completion of Stage 3 is essential; it is in particular not justified to complete only Stages 1 and 2 and then take phytosanitary measures without proper assessment of risk management options. After implementation of the phytosanitary measures, their effectiveness should be monitored and the risk management options should be reviewed, if necessary.

1.3.4 Codex Alimentarius

The SPS Agreement nominates the standards, guidelines, codes of practice and recommendations of the Codex Alimentarius (hereafter referred to as the Codex) relating to food additives, veterinary drugs and pesticide residues, contaminants, methods of analysis and sampling, and hygienic practice as the relevant organisation for food safety. The Codex defines food as any substance, whether processed, semi-processed or raw, which is intended for human consumption. Food hygiene comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption (Codex, 1997a).

The purpose of the Codex is to protect the health of consumers against food-borne hazards, whether they are physical, chemical or biological, and to facilitate international trade (Codex, 1997a; FAO, 1999). General principles have been developed for food import and export inspection and certification. Codes of practice provide guidance on the production of food to protect the health of consumers. There are two codes of practice and one draft code relevant to international trade:

i) Recommended International Code of Practice - General Principles of Food Hygiene that applies to all foods from primary production through to final consumption, highlighting the key hygiene controls required at each stage (Codex, 1997b). It recommends a Hazard Analysis and Critical Control Point

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(HACCP) based approach wherever possible. This preventive system offers more control than end product testing, because the effectiveness of microbiological examination in assessing the safety of food is limited. The Codex recommends that the implementation of HACCP should be guided by scientific evidence of risks to human health.

ii) Code of Ethics for International Trade in Food which encourages food traders to adopt voluntarily ethical practices as an important way of protecting consumers’ health and promoting fair practices in the food trade (FAO, 199958). A principal objective of the Code of Ethics is to stop exporting countries and exporters from dumping poor-quality or unsafe food on to international markets.

iii) Draft Code of Practice for Good Animal Feeding which applies to feed60 manufacturing and to the use of all feeds, other than those consumed while grazing free range (FAO, 199861). The objectives of the code are to encourage adherence to Good Manufacturing Practice (GMP) during the procurement, handling, storage, processing (however minimal), and distribution of feed for food producing animals and to facilitate international trade in animal feedstuffs and animal food products.

The Codex Commission is developing guidelines and recommendations for Food Import Control Systems to assist in the management of food safety hazards while minimising trade disruptions (Codex, 200062). Amongst other things the guidelines cover the roles and functions of authorities involved, frequency of testing and inspection, points of control, equivalence of control systems between countries, verification and certification.

Risk analysis is the fundamental methodology underlying the development of food safety standards by the Codex Commission. It is composed of three separate but integrated elements, namely risk assessment, risk management and risk communication63 (Codex,

60 Feed means any substance whether processed, semi-processed or raw, which is intended for consumption by animals from which food for human consumption is derived.


63 These Definitions were adopted by the 22nd Session of the Commission (1997)(4) on an interim basis: they are subject to modification in the light of developments in the science of risk analysis and as a result of efforts to harmonise similar definitions across various disciplines
1.3.4.1 Risk assessment

Risk assessment is a scientifically based process consisting of the following steps:

i) **Hazard identification**, which is the identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

ii) **Hazard characterisation**, which is the qualitative and/or quantitative evaluation of the nature of the adverse health effects, associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

iii) **Exposure assessment**, which is the qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

iv) **Risk characterisation**, which is the qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard characterisation and exposure assessment.

1.3.4.2 Risk management

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66 Dose-response assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).
Risk management is the process of weighing policy alternatives in the light of the results of risk assessment and, if required, selecting and implementing appropriate control options, including regulatory measures.

1.3.4.3 Risk communication

Risk communication is the interactive exchange of information and opinions concerning risk among risk assessors, risk managers, consumers and other interested parties.

1.3.5 Convention on Biological Diversity (1992)

The objectives of the Convention on Biological Diversity (1992) are the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising out of the use of genetic resources. Article 8(h) of the Convention states that ‘each contracting party shall, as far as possible and as appropriate prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species’.

It does not specify how Parties to the Convention should implement this requirement, but the sixth Conference of the Parties (COP 6) adopted 15 guiding principles for the prevention, introduction and mitigation of impacts of invasive alien species. Guiding principle 7: Border control and quarantine measures, requires States to implement border controls and quarantine measures for alien species that are or could become invasive to ensure that intentional introductions of alien species are subject to appropriate authorization and unintentional or unauthorized introductions of alien species are minimized. These measures should be based on a risk analysis of the threats posed by alien species and their potential pathways of entry.

The SPS allows Members to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life and health provided that they are based on scientific principles and are not applied in a manner which would constitute a disguised restriction on international trade. The SPS definition of ‘animal’ includes fish and wild fauna and ‘plant’ includes forests and wild flora’. It thus makes provision for measures such as those required by the CBD which go beyond the scope of the established international

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67 One representative entered a formal objection during the process leading to the adoption of this decision and underlined that he did not believe the Conference of the Parties could legitimately adopt a motion or a text with a formal objection in place. A few representatives expressed reservations regarding the procedure leading to the adoption of the decision.
The preamble to the Convention on Biological Diversity also provides for application of the precautionary principle: ‘where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat’. Guiding principle 1 (COP6) advises that given the unpredictability of the pathways and impacts on biological diversity of invasive alien species, efforts to identify and prevent unintentional introductions as well as decisions concerning intentional introductions should be based on the precautionary approach, in particular with reference to risk analysis.

### 1.3.6 International Health Regulations (2005)

The new International Health Regulations (IHR) were adopted by the Fifty-Eighth World Health Assembly on 23 May 2005. At the time of writing New Zealand still has an opportunity to lodge reservations against certain aspects of the regulations. If New Zealand does not lodge any reservations it will be bound by the regulations as adopted by the World Health Assembly.

The new regulations are designed to prevent, protect against, control and provide a public health response to the international spread of disease such as the recent outbreaks of SARS in 2003 and avian influenza in 2004-2005. They aim to do this in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade. The IHR also establish a single code of procedures and practices for routine public health measures at international airports and ports and some ground crossings.

A great deal of the provisions in the regulations deal with issues that are not directly relevant to MAF’s risk analysis procedures, such as: the movement of people; the movement and sanitary conditions of craft; and the sanitary requirements for ports and other points of entry.

Other provisions deal with the movement of cargo, mail, containers and goods generally and so do create obligations for MAF when carrying out risk analysis.

The IHR do not prescribe risk assessment in the same way as the SPS agreement. However they do contain certain general requirements that will have implications for risk assessment by whichever part of the government is deemed to be the “competent authority”. MAF
NEW ZEALAND currently assumes the role of competent authority much of the time and – when acting in this capacity – is bound by the IHR.

Article 22 (1) (c) requires competent authorities to:

“(c) be responsible for the supervision of any deratting, disinfection, disinsection or decontamination of baggage, cargo, containers, conveyances, goods, postal parcels and human remains or sanitary measures for persons, as appropriate under these Regulations;”

To the extent that this provision applies to baggage, cargo, containers, goods and postal parcels it requires MAF – as the competent authority - to assess the public health risk posed by such incoming material and the consequent need for deratting, disinfection, disinsection or decontamination.

Also relevant are Articles 22 (1) (f) and (g), which require competent authorities to:

“(f) take all practicable measures consistent with these regulations to monitor and control the discharge by ships of sewage, refuse, ballast water and other potentially disease-causing matter which might contaminate the waters of a port, river, canal, strait, lake or other international waterway;”

“(g) be responsible for supervision of service providers for services concerning travellers, baggage, cargo, containers, conveyances, goods, postal parcels and human remains at points of entry, including the conduct of inspections and medical examinations as necessary;”

Article 22 (1) (f) imposes obligations on MAF to assess the risk posed to public health from ship discharges and consider how to monitor and control these discharges. Article 22 (1)(g) requires MAF to assess the need for inspections of goods crossing the border.

MAF must also assess and avoid the collateral effects of any border biosecurity measures on people, goods and the environment. As stated by Article 22 (3):

“(3) Disinsection, deratting, disinfection, decontamination and other sanitary procedures shall be carried out so as to avoid injury and as far as possible discomfort to persons, or damage to the environment in a way which impacts on public health, or damage to baggage, cargo, containers, conveyances, goods and postal parcels.”
Additional obligations to carry out risk assessment may result if the World Health Organization declares a public health emergency of international concern under Article 12.

Such emergencies become relevant under Article 22 (1) (a) of the regulations which requires “competent authorities” within states parties such as New Zealand to:

“(a) be responsible for monitoring conveyances, containers, cargo, goods and baggage and postal parcels departing and arriving from affected areas, to ensure that they are maintained in such a condition that they are free of sources of infection or contamination, including vectors and reservoirs;” [emphasis added]

Thus MAF must assess the risk posed by goods originating from an “affected area” and ensure that they are free of the contamination of concern. This may require capacity to make urgent re-assessments of risk and diverge from the regular import health standard measures which were drafted prior to the emergency.

Further obligations may result if the World Health Organization makes standing recommendations under Article 16 for the routine or periodic inspection, treatment or destruction of goods from affected areas that may be associated with organisms of public health concern.

At the time of writing this report there are no standing recommendations however it will be important for MAF to ensure that all risk analyses take account of any such recommendations that exist.

The International Health Regulations allow that compliance with standing recommendations is not mandatory because Article 16 states that:

“Such measures may be applied by State Parties...” [emphasis added]

The Ministry of Health will be the lead agency informing a whole of government view as to the desirability of implementing, modifying or exceeding any standing recommendations issued by World Health Organization. However, MAF should seek to comply with standing recommendations at all times, unless in conjunction with the Ministry of Health it is determined that there is some special reason peculiar to New Zealand that would justify an exception.
Appendix 2: Check List for Risk Analysis Projects

File: ______________

CHECKSHEET

PROJECT DOCUMENTS

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INTERNAL PEER REVIEW

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SUBMISSIONS

Original deadline for submissions: ___________________________

Extended to: ___________________________

For reason: ___________________________

Submission received from: ___________________________ Date: ___________________________

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REVIEW OF SUBMISSIONS

Approved by (Name): ___________________________ Project description: ___________________________ Date approved: ___________________________

Sent to: ___________________________ Date: ___________________________
A comparative assessment of existing policies on invasive species in the EU
Member States and in selected OECD countries
1.4. UNITED STATES OF AMERICA


(a) “Alien species” means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(f) “Invasive species” means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Sec. 2. Federal Agency Duties.

(a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, (1) identify such actions; (2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Sec. 3. Invasive Species Council.

(a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal
agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

Sec. 4. Duties of the Invasive Species Council.

The Invasive Species Council shall provide national leadership regarding invasive species, and shall: (a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources; (b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species; (c) develop recommendations for international cooperation in addressing invasive species; (d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species; (e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health; (f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and (g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Sec. 5. Invasive Species Management Plan.

(a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.
National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008

SEC. 314. REPORT ON CONTROL OF THE BROWN TREE SNAKE.

The brown tree snake (Boiga irregularis), an invasive species, is found in significant numbers on military installations and in other areas on Guam, and constitutes a serious threat to the ecology of Guam. If introduced into Hawaii, the Commonwealth of the Northern Mariana Islands, or the continental United States, the brown tree snake would pose an immediate and serious economic and ecological threat. The most probable vector for the introduction of the brown tree snake into Hawaii, the Commonwealth of the Northern Mariana Islands, or the continental United States is the movement from Guam of military aircraft, personnel, and cargo, including the household goods of military personnel and other military assets. It is probable that the movement of military aircraft, personnel, and cargo, including the household goods of military personnel, from Guam to Hawaii, the Commonwealth of the Northern Mariana Islands, or the continental United States will increase significantly coincident with the increase in the number of military units and personnel stationed on Guam.

5) Current policies, programs, procedures, and dedicated resources of the Department of Defense and of other departments and agencies of the United States may not be sufficient to adequately address the management, control, and eradication of the brown tree snake on Guam and the increasing threat of the introduction of the brown tree snake from Guam into Hawaii, the Commonwealth of the Northern Mariana Islands, the continental United States, or other non-native environments.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the following: (1) The actions currently being taken (including the resources being made available) by the Department of Defense to control, and to develop new or existing techniques to control, the brown tree snake on Guam and to prevent the introduction of the brown tree snake into Hawaii, the Commonwealth of the Northern Mariana Islands, the continental United States, or any other non-native environment as a result of the movement from Guam of military aircraft, personnel, and cargo, including the household goods of military personnel and other military assets. Such actions shall include any actions taken by the Department of Defense to implement the recommendations of the Brown Tree Snake Review Panel commissioned by the Department of the Interior, as contained in the Review Panel’s final report entitled “Review of Brown Tree Snake Problems and Control Programs” published in March 2005. (2) Current plans for enhanced future actions, policies, and procedures and increased levels of resources in order to ensure that the projected increase of military personnel stationed on Guam does not increase the threat of introduction of the brown tree snake from Guam into Hawaii, the Commonwealth of the Northern Mariana Islands, the continental United States, or other non-native environments. (3) The results of management, control, and eradication carried out by the Secretary of Defense, in consultation with the Secretary of the Interior, before the date on which the report is submitted with respect to brown tree snakes through the integrated natural
resource management plans prepared for military installations in Guam under the pilot program authorized by section 101(g) of the Sikes Act (16 U.S.C. 670a(g)).

**Water Resources Development Act of 2007**

“SEC. 345. CHICAGO SANITARY AND SHIP CANAL DISPERSAL BARRIER, ILLINOIS.

(d) FEASIBILITY STUDY.—The Secretary, in consultation with appropriate Federal, State, local, and nongovernmental entities, shall conduct, at Federal expense, a feasibility study of the range of options and technologies available to prevent the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins through the Chicago Sanitary and Ship Canal and other aquatic pathways.

SEC. 3159. UPPER CONNECTICUT RIVER BASIN ECOSYSTEM RESTORATION, VERMONT AND NEW HAMPSHIRE

(a) GENERAL MANAGEMENT PLAN DEVELOPMENT.— (1) IN GENERAL.—The Secretary, in cooperation with the Secretary of Agriculture and in consultation with the States of Vermont and New Hampshire and the Connecticut River Joint Commission, shall conduct a study and develop a general management plan for ecosystem restoration of the Upper Connecticut River ecosystem for the purposes of— (A) habitat protection and restoration; (B) streambank stabilization; (C) restoration of stream stability; (D) water quality improvement; (E) aquatic nuisance species control; (F) wetland restoration; (G) fish passage; and (H) natural flow restoration (2) ELIGIBLE PROJECTS.—A critical restoration project shall be eligible for assistance under this section if the project— (A) meets the purposes described in the general management plan developed under subsection (a); and (B) with respect to the Upper Connecticut River and Upper Connecticut River watershed, consists of— (i) bank stabilization of the main stem, tributaries, and streams; (ii) wetland restoration and migratory bird habitat restoration; (iii) soil and water conservation; (iv) restoration of natural flows; (v) restoration of stream stability; (vi) implementation of an intergovernmental agreement for coordinating ecosystem restoration, fish passage installation, streambank stabilization, wetland restoration, habitat protection and restoration, or natural flow restoration; (vii) water quality improvement; (viii) aquatic nuisance species control; (ix) improvements in fish migration; and (x) conduct of any other project or activity determined to be appropriate by the Secretary.

SEC. 4059. FINGER LAKES, NEW YORK.

The Secretary shall conduct a study to determine the feasibility of carrying out a project for aquatic ecosystem restoration and protection, Finger Lakes, New York, to address water quality and aquatic nuisance species.

SEC. 5016. UPPER MISSISSIPPI RIVER DISPERSAL BARRIER PROJECT

In General.—The Secretary, in consultation with appropriate Federal and State agencies, shall study, design, and carry out a project to delay, deter, impede, or restrict the dispersal of aquatic nuisance species into the northern reaches of the Upper Mississippi River system. The Secretary shall complete the study, design, and construction of the project not later than 6 months after the date of enactment of this Act. (b) DISPERSAL BARRIER.—In carrying out
subsection (a), the Secretary, at Federal expense, shall— (1) investigate and identify environmentally sound methods for preventing and reducing the dispersal of aquatic nuisance species through the northern reaches of the Upper Mississippi River system; (2) use available technologies and measures; (3) monitor and evaluate, in cooperation with the Director of the United States Fish and Wildlife Service, the effectiveness of the project in preventing and reducing the dispersal of aquatic nuisance species through the northern reaches of the Upper Mississippi River system;

SEC. 5146. LAKE CHAMPLAIN CANAL, VERMONT AND NEW YORK.

DISPERSAL BARRIER PROJECT.—The Secretary shall determine, at Federal expense, the feasibility of a dispersal barrier project at the Lake Champlain Canal, Vermont and New York, to prevent the spread of aquatic nuisance species

SEC. 5158. ADDITIONAL ASSISTANCE FOR CRITICAL PROJECTS.

“(106) SWEETWATER RESERVOIR, SAN DIEGO COUNTY, CALIFORNIA.—$ 375,000 to improve water quality and remove nonnative aquatic nuisance species from the Sweetwater Reservoir, San Diego County, California.

Great Lakes Fish and Wildlife Restoration Act of 2006

“(3) SEA LAMPREY AUTHORITY.—The Great Lakes Fishery Commission shall retain authority and responsibility to formulate and implement a comprehensive program to eradicate or minimize sea lamprey populations in the Great Lakes Basin. “(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), not less than 25 percent of the cost of implementing a proposal selected under subsection (d) (excluding the cost of establishing sea lamprey barriers) shall be paid in cash or in-kind contributions by non-Federal sources.

Salt Cedar and Russian Olive Control Demonstration Act

(a) ESTABLISHMENT.—The Secretary of the Interior (referred to in this Act as the “Secretary”), acting through the Commissioner of Reclamation and the Director of the United States Geological Survey and in cooperation with the Secretary of Agriculture and the Secretary of Defense, shall carry out a salt cedar (Tamarix spp) and Russian olive (Elaeagnus angustifolia) assessment and demonstration program— (1) to assess the extent of the infestation by salt cedar and Russian olive trees in the western United States; (2) to demonstrate strategic solutions for— (A) the long-term management of salt cedar and Russian olive trees; and (B) the reestablishment of native vegetation; and (3) to assess economic means to dispose of biomass created as a result of removal of salt cedar and Russian olive trees.

(b) MEMORANDUM OF UNDERSTANDING.—As soon as practicable after the date of enactment of this Act, the Secretary and the Secretary of Agriculture shall enter into a memorandum of understanding providing for the administration of the program established under subsection (a).

(c) ASSESSMENT.— (1) IN GENERAL.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation on public and private land in the western United States. (2) REQUIREMENTS.—In addition to describing the acreage of and severity of
infestation by salt cedar and Russian olive trees in the western United States, the assessment shall— (A) consider existing research on methods to control salt cedar and Russian olive trees; (B) consider the feasibility of reducing water consumption by salt cedar and Russian olive trees; (C) consider methods of and challenges associated with the revegetation or restoration of infested land; and (D) estimate the costs of destruction of salt cedar and Russian olive trees, related biomass removal, and revegetation or restoration and maintenance of the infested land. (3) REPORT.— (A) IN GENERAL.—The Secretary shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Resources and the Committee on Agriculture of the House of Representatives a report that includes the results of the assessment conducted under paragraph (1). (B) CONTENTS.—The report submitted under subparagraph (A) shall identify— (i) long-term management and funding strategies identified under subsection (d) that could be implemented by Federal, State, tribal, and private land managers and owners to address the infestation by salt cedar and Russian olive; (ii) any deficiencies in the assessment or areas for additional study; and (iii) any field demonstrations that would be useful in the effort to control salt cedar and Russian olive.

(d) LONG-TERM MANAGEMENT STRATEGIES.— (1) IN GENERAL.—The Secretary shall identify and document long-term management and funding strategies that— (A) could be implemented by Federal, State, tribal, and private land managers in addressing infestation by salt cedar and Russian olive trees; and (B) should be tested as components of demonstration projects under subsection (e). (2) GRANTS.— (A) IN GENERAL.—The Secretary may provide grants to eligible entities to provide technical experience, support, and recommendations relating to the identification and documentation of long-term management and funding strategies under paragraph (1). (B) ELIGIBLE ENTITIES.—Institutions of higher education and nonprofit organizations with an established background and expertise in the public policy issues associated with the control of salt cedar and Russian olive trees shall be eligible for a grant under subparagraph (A). (C) MINIMUM AMOUNT.—The amount of a grant provided under subparagraph (A) shall be not less than $250,000.

(e) DEMONSTRATION PROJECTS.— (1) IN GENERAL.—Not later than 180 days after the date on which funds are made available to carry out this Act, the Secretary shall establish a program that selects and funds not less than 5 projects proposed by and implemented in collaboration with Federal agencies, units of State and local government, national laboratories, Indian tribes, institutions of higher education, individuals, organizations, or soil and water conservation districts to demonstrate and evaluate the most effective methods of controlling salt cedar and Russian olive trees. (2) PROJECT REQUIREMENTS.—The demonstration projects under paragraph (1) shall— (A) be carried out over a time period and to a scale designed to fully assess long-term management strategies; (B) implement salt cedar or Russian olive tree control using 1 or more methods for each project in order to assess the full range of control methods, including— (i) airborne application of herbicides; (ii) mechanical removal; and (iii) biocontrol methods, such as the use of goats or insects; (C) individually or in conjunction with other demonstration projects, assess the effects of and obstacles to combining multiple control methods and determine optimal combinations of control methods; (D) assess soil conditions resulting from salt cedar and Russian olive tree
infestation and means to revitalize soils; (E) define and implement appropriate final vegetative states and optimal revegetation methods, with preference for self-maintaining vegetative states and native vegetation, and taking into consideration downstream impacts, wildfire potential, and water savings; (F) identify methods for preventing the regrowth and re reintroduction of salt cedar and Russian olive trees; (G) monitor and document any water savings from the control of salt cedar and Russian olive trees, including impacts to both groundwater and surface water; (H) assess wildfire activity and management strategies; (I) assess changes in wildlife habitat; (J) determine conditions under which removal of biomass is appropriate (including optimal methods for the disposal or use of biomass); and (K) assess economic and other impacts associated with control methods and the restoration and maintenance of land.

(f) Disposition of Biomass.— (1) In General.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary, in cooperation with the Secretary of Agriculture, shall complete an analysis of economic means to use or dispose of biomass created as a result of removal of salt cedar and Russian olive trees. (2) Requirements.—The analysis shall— (A) determine conditions under which removal of biomass is economically viable; (B) consider and build upon existing research by the Department of Agriculture and other agencies on beneficial uses of salt cedar and Russian olive tree fiber; and (C) consider economic development opportunities, including manufacture of wood products using biomass resulting from demonstration projects under subsection (e) as a means of defraying costs of control.

(g) Costs.— (1) In General.—With respect to projects and activities carried out under this Act— (A) the assessment under subsection (c) shall be carried out at a cost of not more than $4,000,000; (B) the identification and documentation of long-term management strategies under subsection (d)(1) and the provision of grants under subsection (d)(2) shall be carried out at a cost of not more than $2,000,000; (C) each demonstration project under subsection (e) shall be carried out at a Federal cost of not more than $7,000,000 (including costs of planning, design, implementation, maintenance, and monitoring); and (D) the analysis under subsection (f) shall be carried out at a cost of not more than $3,000,000. (2) Cost-Sharing.— (A) In General.—The assessment under subsection (c), the identification and documentation of long-term management strategies under subsection (d), a demonstration project or portion of a demonstration project under subsection (e) that is carried out on Federal land, and the analysis under subsection (f) shall be carried out at full Federal expense. (B) Demonstration Projects Carried Out on Non-Federal Land.— (i) In General.—The Federal share of the costs of any demonstration project funded under subsection (e) that is not carried out on Federal land shall not exceed 75 percent. (ii) Form of Non-Federal Share.—The non-Federal share of the costs of a demonstration project that is not carried out on Federal land may be provided in the form of in-kind contributions, including services provided by a State agency or any other public or private partner.

(h) Cooperation.—In carrying out the assessment under subsection (c), the demonstration projects under subsection (e), and the analysis under subsection (f), the Secretary shall cooperate with and use the expertise of Federal agencies and the other entities specified in
subsection (e)(1) that are actively conducting research on or implementing salt cedar and Russian olive tree control activities.

(i) INDEPENDENT REVIEW.—The Secretary shall subject to independent review— (1) the assessment under subsection (c); (2) the identification and documentation of long-term management strategies under subsection (d); (3) the demonstration projects under subsection (e); and (4) the analysis under subsection (f).

(jj) REPORTING.— (1) IN GENERAL.—The Secretary shall submit to Congress an annual report that describes the results of carrying out this Act, including a synopsis of any independent review under subsection (i) and details of the manner and purposes for which funds are expended. (2) PUBLIC ACCESS.—The Secretary shall facilitate public access to all information that results from carrying out this Act.

(k) AUTHORIZATION OF APPROPRIATIONS.— (1) IN GENERAL.—There are authorized to be appropriated to carry out this Act— (A) $20,000,000 for fiscal year 2006; and (B) $15,000,000 for each of fiscal years 2007 through 2010. (2) ADMINISTRATIVE COSTS.—Not more than 15 percent of amounts made available under paragraph (1) shall be used to pay the administrative costs of carrying out the program established under subsection (a).

(l) TERMINATION OF AUTHORITY.—This Act and the authority provided by this Act terminate on the date that is 5 years after the date of the enactment of this Act.
“SEC. 453. ESTABLISHMENT OF PROGRAM.

“(a) In General.—The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds.”

(c) AGREEMENTS.—Subject to the availability of appropriations under section 457(b), the Secretary shall enter into agreements under section 455 with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

“(c) USE OF GRANT FUNDS; COST SHARES.—“(1) USE OF GRANTS.—A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed.“(2) COST SHARES.—“(A) FEDERAL COST SHARE.—The Federal share of the cost of carrying out an authorized project under this section exclusively on non-Federal land shall not exceed 50 percent.“(B) FORM OF NON-FEDERAL COST SHARE.—The non-Federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind.

“(d) AUTHORIZED PROJECTS.—Projects funded by grants under this section include the following:“(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.“(2) Other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds.

“(f) SELECTION OF PROJECTS.—Projects funded under this section shall be selected by the Secretary on a competitive basis, taking into consideration the following:“(1) The severity of the noxious weed problem or potential problem addressed by the project.“(2) The likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems.“(3) The extent to which the Federal funds will leverage non-Federal funds to address the noxious weed problem addressed by the project.“(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.“(5) The extent to which the weed management entity has made progress in addressing noxious weed problems.“(6) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds.“(7) The extent to which the project will reduce the total population of noxious weeds.“(8) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.“(9) Other factors that the Secretary determines to be relevant.

“(f) RAPID RESPONSE PROGRAM.—At the request of the Governor of a State, the Secretary may enter into a cooperative agreement with a weed management entity in that State to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if—“(1) there is a demonstrated need for the assistance;“(2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary;“(3) the economic impact of delaying action is considered by the Secretary to be substantial; and“(4) the proposed response to such threat—“(A) is technically feasible;
“(B) economically responsible; and “(C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

Brown Tree Snake Control and Eradication Act of 2004

(1) BROWN TREE SNAKE.—The term “brown tree snake” means the species of the snake Boiga irregularis

(4) INTRODUCTION.—The terms “introduce” and “introduction” refer to the expansion of the brown tree snake outside of the range where this species is endemic.

(9) UNITED STATES.—The term “United States”, when used in the geographic sense, means the several States, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the United States Virgin Islands, any other possession of the United States, and any waters within the jurisdiction of the United States

SEC. 3. SENSE OF CONGRESS REGARDING NEED FOR IMPROVED AND BETTER COORDINATED FEDERAL POLICY FOR BROWN TREE SNAKE INTRODUCTION, CONTROL, AND ERADICATION.

It is the sense of Congress that there exists a need for improved and better coordinated control, interdiction, research, and eradication of the brown tree snake on the part of the United States and other interested parties.

SEC. 4. BROWN TREE SNAKE CONTROL, INTERDICTION, RESEARCH AND ERADICATION.

(a) FUNDING AUTHORITY.—Subject to the availability of appropriations to carry out this section, the Secretaries shall provide funds to support brown tree snake control, interdiction, research, and eradication efforts carried out by the Department of the Interior and the Department of Agriculture, other Federal agencies, States, territorial governments, local governments, and private sector entities. Funds may be provided through grants, contracts, reimbursable agreements, or other legal mechanisms available to the Secretaries for the transfer of Federal funds.

(b) AUTHORIZED ACTIVITIES.—Brown tree snake control, interdiction, research, and eradication efforts authorized by this section shall include at a minimum the following: (1) Expansion of science-based eradication and control programs in Guam to reduce the undesirable impact of the brown tree snake in Guam and reduce the risk of the introduction or spread of any brown tree snake to areas in the United States and the Freely Associated States in which the brown tree snake is not established. (2) Expansion of interagency and intergovernmental rapid response teams in Guam, the Commonwealth of the Northern Mariana Islands, Hawaii, and the Freely Associated States to assist the governments of such areas with detecting the brown tree snake and incipient brown tree snake populations. (3) Expansion of efforts to protect and restore native wildlife in Guam or elsewhere in the United States damaged by the brown tree snake. (4) Establishment and sustained funding for an Animal Plant and Health Inspection Service, Wildlife Services, Operations Program State Office located in Hawaii dedicated to vertebrate pest management in Hawaii and United States Pacific territories and possessions. Concurrently, the Animal Plant and Health Inspection Service, Wildlife Services Operations Program shall establish and sustain funding for a
District Office in Guam dedicated to brown tree snake control and managed by the Hawaii State Office. (5) Continuation, expansion, and provision of sustained research funding related to the brown tree snake, including research conducted at institutions located in areas affected by the brown tree snake. (6) Continuation, expansion, and provision of sustained research funding for the Animal Plant and Health Inspection Service, Wildlife Services, National Wildlife Research Center of the Department of Agriculture related to the brown tree snake, including the establishment of a field station in Guam related to the control and eradication of the brown tree snake. (7) Continuation, expansion, and provision of sustained research funding for the Fort Collins Science Center of the United States Geological Survey related to the brown tree snake, including the establishment of a field station in Guam related to the control and eradication of the brown tree snake. (8) Expansion of long-term research into chemical, biological, and other control techniques that could lead to largescale reduction of brown tree snake populations in Guam or other areas where the brown tree snake might become established. (9) Expansion of short, medium, and long-term research, funded by all Federal agencies interested in or affected by the brown tree snake, into interdiction, detection, and early control of the brown tree snake. (10) Provision of planning assistance for the construction or renovation of centralized multi-agency facilities in Guam to support Federal, State, and territorial brown tree snake control, interdiction, research and eradication efforts, including office space, laboratory space, animal holding facilities, and snake detector dog kennels. (11) Provision of technical assistance to the Freely Associated States on matters related to the brown tree snake through the mechanisms contained within a Compact of Free Association dealing with environmental, quarantine, economic, and human health issues.

SEC. 5. ESTABLISHMENT OF QUARANTINE PROTOCOLS TO CONTROL THE INTRODUCTION AND SPREAD OF THE BROWN TREE SNAKE.

(a) Establishment of Quarantine Protocols.—Not later than two years after the date of the enactment of this Act, but subject to the memorandum of agreement required by subsection

(b) with respect to Guam, the Secretaries shall establish and cause to be operated at Federal expense a system of pre-departure quarantine protocols for cargo and other items being shipped from Guam and any other United States location where the brown tree snake may become established to prevent the introduction or spread of the brown tree snake. The Secretaries shall establish the quarantine protocols system by regulation. Under the quarantine protocols system, Federal quarantine, natural resource, conservation, and law enforcement officers and inspectors may enforce State and territorial laws regarding the transportation, possession, or introduction of any brown tree snake.

SEC. 6. TREATMENT OF BROWN TREE SNAKES AS NONMAILABLE MATTER.

A brown tree snake constitutes nonmailable matter under section 3015 of title 39, United States Code.

SEC. 7. ROLE OF BROWN TREE SNAKE TECHNICAL WORKING GROUP.
a) PURPOSE.—The Technical Working Group shall ensure that Federal, State, territorial, and local agency efforts concerning the brown tree snake are coordinated, effective, complementary, and cost-effective.

(c) REPORTING REQUIREMENT.— (1) REPORT.—Subject to the availability of appropriations for this purpose, the Technical Working Group shall prepare a report describing— (A) the progress made toward a large-scale population reduction or eradication of the brown tree snake in Guam or other sites that are infested by the brown tree snake; (B) the interdiction and other activities required to reduce the risk of introduction of the brown tree snake or other nonindigenous snake species in Guam, the Commonwealth of the Northern Mariana Islands, Hawaii, American Samoa, and the Freely Associated States; (C) the applied and basic research activities that will lead to improved brown tree snake control, interdiction and eradication efforts conducted by Federal, State, territorial, and local governments; and (D) the programs and activities for brown tree snake control, interdiction, research and eradication that have been funded, implemented, and planned by Federal, State, territorial, and local governments. (2) PRIORITIES.—The Technical Working Group shall include in the report a list of priorities, ranked in high, medium, and low categories, of Federal, State, territorial, and local efforts and programs in the following areas: (A) Control. (B) Interdiction. (C) Research. (D) Eradication (3) ASSESSMENTS.—Technical Working Group shall include in the report the following assessments: (A) An assessment of current funding shortfalls and future funding needs to support Federal, State, territorial, and local government efforts to control, interdict, eradicate, or conduct research on the brown tree snake. (B) An assessment of regulatory limitations that hinder Federal, State, territorial, and local government efforts to control, interdict, eradicate, or conduct research on the brown tree snake.

Nutria Eradication and Control Act of 2003

(2) The South American nutria (Myocastor coypus) is directly contributing to substantial marsh loss in Maryland and Louisiana on Federal, State, and private land

(3) Traditional harvest methods to control or eradicate nutria have failed in Maryland and have had limited success in the eradication of nutria in Louisiana. Consequently, marsh loss is accelerating.

(4) The nutria eradication and control pilot program authorized by Public Law 105–322 is to develop new and effective methods for eradication of nutria.

SEC. 3. NUTRIA ERADICATION PROGRAM.

(a) GRANT AUTHORITY.—The Secretary of the Interior (in this Act referred to as the “Secretary”), subject to the availability of appropriations, may provide financial assistance to the State of Maryland and the State of Louisiana for a program to implement measures to eradicate or control nutria and restore marshland damaged by nutria.

(b) GOALS.—The goals of the program shall be to— (1) eradicate nutria in Maryland; (2) eradicate or control nutria in Louisiana and other States; and (3) restore marshland damaged by nutria.
Public Health Security and Bioterrorism Preparedness and Response Act of 2002

SEC. 212. REGULATION OF CERTAIN BIOLOGICAL AGENTS AND TOXINS.

(a) REGULATORY CONTROL OF CERTAIN BIOLOGICAL AGENTS AND TOXINS.—(A) IN GENERAL.—The Secretary of Agriculture shall by regulation establish and maintain a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. (B) CRITERIA.—In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall—(i) consider—(I) the effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products; (II) the pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants; (III) the availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and (IV) any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products; and (ii) consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups.

(c) POSSESSION AND USE OF LISTED AGENTS AND TOXINS.—The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of listed agents and toxins, including the provisions described in paragraphs (1) through (4) of subsection (b), in order to protect animal and plant health, and animal and plant products.

(d) REGISTRATION; IDENTIFICATION; DATABASE.—(1) REGISTRATION.—Regulations under subsections (b) and (c) shall require registration with the Secretary of the possession, use, and transfer of listed agents and toxins, and shall include provisions to ensure that persons seeking to register under such regulations have a lawful purpose to possess, use, or transfer such agents and toxins, including provisions in accordance with subsection (e)(6). (2) IDENTIFICATION; DATABASE.—Regulations under subsections (b) and (c) shall require that registration include (if available to the person registering) information regarding the characterization of listed agents and toxins to facilitate their identification, including their source. The Secretary shall maintain a national database that includes the names and locations of registered persons, the listed agents and toxins such persons are possessing, using, or transferring, and information regarding the characterization of such agents and toxins. (1) IN GENERAL.—In addition to any other penalties that may apply under law, any person who violates any provision of regulations under subsection (b) or (c) shall be subject to the United States for a civil money penalty in an amount not exceeding $250,000 in the case of an individual and $500,000 in the case of any other person.

(j) NOTIFICATION IN EVENT OF RELEASE.—Regulations under subsections (b) and (c) shall require the prompt notification of the Secretary by a registered person whenever a release, meeting criteria established by the Secretary, of a listed agent or toxin has occurred outside of the...
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biocontainment area of a facility of the registered person. Upon receipt of such notification and a finding by the Secretary that the release poses a threat to animal or plant health, or animal or plant products, the Secretary shall take appropriate action to notify relevant Federal, State, and local authorities, and, if necessary, other appropriate persons (including the public). If the released listed agent or toxin is an overlap agent or toxin, the Secretary shall promptly notify the Secretary of Health and Human Services upon notification by the registered person. (k)

Farm Security and Rural Investment Act of 2002

“SEC. 1238A. CONSERVATION SECURITY PROGRAM.

“(4) CONSERVATION PRACTICES.—Conservation practices that may be implemented by a producer under a conservation security contract (as appropriate for the agricultural operation of a producer) include—“(F) invasive species management;

SEC. 1240B. ESTABLISHMENT AND ADMINISTRATION OF ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.

“(2) SPECIAL RULE.—In determining the amount and rate of incentive payments, the Secretary may accord great significance to a practice that promotes residue, nutrient, pest, invasive species, or air quality management.

SEC. 4. FOREST LAND ENHANCEMENT PROGRAM.

“(b) PROGRAM OBJECTIVES.—In implementing the program, the Secretary shall target resources to achieve the following objectives:“(3) Reducing the risks and helping restore, recover, and mitigate the damage to forests caused by fire, insects, invasive species, disease, and damaging weather. “(2) TYPES OF ACTIVITIES.—Approved activities and practices under paragraph (1) may consist of activities and practices for the following purposes:“(F) The control, detection, monitoring, and prevention of the spread of invasive species and pests on nonindustrial private forest lands.“(G) The restoration of nonindustrial private forest land affected by invasive species and pests.

SEC. 10A. ENHANCED COMMUNITY FIRE PROTECTION

“(3) COMPONENTS.—In coordination with existing authorities under this Act, the Secretary, in consultation with the State forester or equivalent State official, may undertake on non-Federal lands—“(A) fuel hazard mitigation and prevention;“(B) invasive species management;

Plant Protection Act 2000

(2) BIOLOGICAL CONTROL ORGANISM.—The term “biological control organism” means any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

(10) NOXIOUS WEED.—The term “noxious weed” means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

SEC. 411. REGULATION OF MOVEMENT OF PLANT PESTS.
(a) **Prohibition of Unauthorized Movement of Plant Pests.**—Except as provided in subsection (c), no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

(c) **Authorization of Movement of Plant Pests by Regulation.**—(1) Exception to Permit Requirement.—The Secretary may issue regulations to allow the importation, entry, exportation, or movement in interstate commerce of specified plant pests without further restriction if the Secretary finds that a permit under subsection (a) is not necessary.

(d) **Prohibition of Unauthorized Mailing of Plant Pests.**—(1) In General.—Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is nonmailable and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, unless the letter, parcel, box, or other package is mailed in compliance with such regulations as the Secretary may issue to prevent the dissemination of plant pests into the United States or interstate.

SEC. 412. REGULATION OF MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.

(a) In General.—The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States.

(c) Regulations.—The Secretary may issue regulations to implement subsection (a), including regulations requiring that any plant, plant product, biological control organism, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce—(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce; (2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant, plant product, biological control organism, noxious weed, article, or means of conveyance is to be moved; (3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests or noxious weeds; and (4) with respect to plants or biological control organisms, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant or biological control organism may be infested with plant pests or may be a plant pest or noxious weed.

(f) **Noxious Weeds.**—(1) Regulations.—In the case of noxious weeds, the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States sound science.
(g) Biological Control Organisms.—(1) Regulations.—In the case of biological control organisms, the Secretary may publish, by regulation, a list of organisms whose movement in interstate commerce is not prohibited or restricted. Any listing may take into account distinctions between organisms such as indigenous, nonindigenous, newly introduced, or commercially raised.

SEC. 413. NOTIFICATION AND HOLDING REQUIREMENTS UPON ARRIVAL.

(a) Duty of Secretary of the Treasury.—(1) Notification.—The Secretary of the Treasury shall promptly notify the Secretary of Agriculture of the arrival of any plant, plant product, biological control organism, plant pest, or noxious weed at a port of entry. (2) Holding.—The Secretary of the Treasury shall hold a plant, plant product, biological control organism, plant pest, or noxious weed for which notification is made under paragraph (1) at the port of entry until the plant, plant product, biological control organism, plant pest, or noxious weed—

(c) Prohibition on Movement of Items Without Authorization.—No person shall move from a port of entry or interstate any imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance—(1) is inspected and authorized for entry into or transit movement through the United States; or (2) is otherwise released by the Secretary.

SEC. 414. GENERAL REMEDIAL MEASURES FOR NEW PLANT PESTS AND NOXIOUS WEEDS.

(a) Authority to Hold, Treat, or Destroy Items.—If the Secretary considers it necessary in order to prevent the dissemination of a plant pest or noxious weed that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that—(1) is moving into or through the United States or interstate, or has moved into or through the United States or interstate, and—(A) the Secretary has reason to believe is a plant pest or noxious weed or is infested with a plant pest or noxious weed at the time of the movement; or (B) is or has been otherwise in violation of this title; (2) has not been maintained in compliance with a postentry quarantine requirement; or (3) is the progeny of any plant, biological control organism, plant product, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this title.

(b) Authority to Order an Owner To Treat or Destroy.—(1) In General.—The Secretary may order the owner of any plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance subject to action under subsection (a), or the owner’s agent, to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance, without cost to the Federal Government and in the manner the Secretary considers appropriate. (2) Failure to Comply.—If the owner or agent of the owner fails to comply with the Secretary’s order under this subsection, the Secretary may take an
action authorized by subsection (a) and recover from the owner or agent of the owner the costs of any care, handling, application of remedial measures, or disposal incurred by the Secretary in connection with actions taken under subsection (a).

(c) **CLASSIFICATION SYSTEM.**—(1) **DEVELOPMENT REQUIRED.**—To facilitate control of noxious weeds, the Secretary may develop a classification system to describe the status and action levels for noxious weeds. The classification system may include the current geographic distribution, relative threat, and actions initiated to prevent introduction or distribution. (2) **MANAGEMENT PLANS.**—In conjunction with the classification system, the Secretary may develop integrated management plans for noxious weeds for the geographic region or ecological range where the noxious weed is found in the United States.

(d) **APPLICATION OF LEAST DRASTIC ACTION.**—No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

SEC. 415. DECLARATION OF EXTRAORDINARY EMERGENCY AND RESULTING AUTHORITIES.

(a) **AUTHORITY TO DECLARE.**—If the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States, the Secretary may— (1) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; (2) quarantine, treat, or apply other remedial measures to any premises, including any plants, biological control organisms, plant products, articles, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed; (3) quarantine any State or portion of a State in which the Secretary finds the plant pest or noxious weed or any plant, biological control organism, plant product, article, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed; and (4) prohibit or restrict the movement within a State of any plant, biological control organism, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

SEC. 416. RECOVERY OF COMPENSATION FOR UNAUTHORIZED ACTIVITIES.

(a) **RECOVERY ACTION.**—The owner of any plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under section 414 or 415 may bring an action against the United States to recover just compensation for the destruction or disposal of the plant,
plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment), but only if the owner establishes that the destruction or disposal was not authorized under this title.

(b) **TIME FOR ACTION; LOCATION.**—An action under this section shall be brought not later than 1 year after the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance involved. The action may be brought in any United States district court where the owner is found, resides, transacts business, is licensed to do business, or is incorporated.

**SEC. 418. CERTIFICATION FOR EXPORTS.**

The Secretary may certify as to the freedom of plants, plant products, or biological control organisms from plant pests or noxious weeds, or the exposure of plants, plant products, or biological control organisms to plant pests or noxious weeds, according to the phytosanitary or other requirements of the countries to which the plants, plant products, or biological control organisms may be exported.

**SEC. 421. INSPECTIONS, SEIZURES, AND WARRANTS.**

(a) **ROLE OF ATTORNEY GENERAL.**—The activities authorized by this section shall be carried out consistent with guidelines approved by the Attorney General.

(b) **WARRANTLESS INSPECTIONS.**—The Secretary may stop and inspect, without a warrant, any person or means of conveyance moving— (1) into the United States to determine whether the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title; (2) in interstate commerce, upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title; and (3) in intrastate commerce from or within any State, portion of a State, or premises quarantined as part of a extraordinary emergency declared under section 415 upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article regulated under that section or is moving subject to that section.

(c) **INSPECTIONS WITH A WARRANT.**— (1) **GENERAL AUTHORITY.**—The Secretary may enter, with a warrant, any premises in the United States for the purpose of conducting investigations or making inspections and seizures under this title.

**SEC. 424. PENALTIES FOR VIOLATION.**

(a) **CRIMINAL PENALTIES.**—Any person that knowingly violates this title, or that knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title shall be guilty of a misdemeanor, and, upon conviction, shall be fined in accordance with title 18, United States Code, imprisoned for a period not exceeding 1 year, or both.
b) Civil Penalties.— (1) In general.—Any person that violates this title, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of— (A) $50,000 in the case of any individual (except that the civil penalty may not exceed $1,000 in the case of an initial violation of this title by an individual moving regulated articles not for monetary gain), $250,000 in the case of any other person for each violation, and $500,000 for all violations adjudicated in a single proceeding; or (B) twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in this title that results in the person deriving pecuniary gain or causing pecuniary loss to another.

SEC. 431. COOPERATION.

(a) In General.—The Secretary may cooperate with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out this title.

▶ Lacey Act

42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations

(a) (1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species Herpestes auropunctatus; of the species of so-called “flying foxes” or fruit bats of the genus Pteropus; of the zebra mussel of the species Dreissena polymorpha; and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea), amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act.

(5) The Secretary of the Treasury and the Secretary of the Interior shall enforce the provisions of this subsection, including any regulations issued hereunder, and, if requested
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by the Secretary of the Interior, the Secretary of the Treasury may require the furnishing of an appropriate bond when desirable to insure compliance with such provisions.

(b) Whoever violates this section, or any regulation issued pursuant thereto, shall be fined under this title or imprisoned not more than six months, or both.

3372. Prohibited acts (a) Offenses other than marking offenses It is unlawful for any person—(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

3373. Penalties and sanctions (a) Civil penalties

(1) Any person who engages in conduct prohibited by any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates section 3372 (d) of this title, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation: Provided, That when the violation involves fish or wildlife or plants with a market value of less than $350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or $10,000, whichever is less.

(2) Any person who violates section 3372 (b) of this title may be assessed a civil penalty by the Secretary of not more than $250.

3374. Forfeiture (a) In general (1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372 (b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.

National Invasive Species Act of 1996

‘SEC. 1101. AQUATIC NUISANCE SPECIES IN WATERS OF THE UNITED STATES.

“(c) VOLUNTARY NATIONAL GUIDELINES.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the National Invasive Species Act of 1996, and after providing notice and an opportunity for public comment, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of nonindigenous species in waters of the United States by ballast water operations and other operations of vessels equipped with ballast water tanks. “(2) CONTENT OF GUIDELINES.—The voluntary guidelines issued under this subsection shall—“(A) ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States.
United States from vessels; “(B) apply to all vessels equipped with ballast water tanks that operate in waters of the United States; “(C) protect the safety of— “(i) each vessel; and “(ii) the crew and passengers of each vessel; “(D) direct a vessel that is carrying ballast water into waters of the United States after operating beyond the exclusive economic zone to— “(i) carry out the exchange of ballast water of the vessel in waters beyond the exclusive economic zone; “(ii) exchange the ballast water of the vessel in other waters where the exchange does not pose a threat of infestation or spread of nonindigenous species in waters of the United States, as recommended by the Task Force under section 1102(a)(1); or “(iii) use environmentally sound alternative ballast water management methods, including modification of the vessel ballast water tanks and intake systems, if the Secretary determines that such alternative methods are at least as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species; “(E) direct vessels to carry out management practices that the Secretary determines to be necessary to reduce the probability of unintentional nonindigenous species transfer resulting from— “(i) ship operations other than ballast water discharge; and “(ii) ballasting practices of vessels that enter waters of the United States with no ballast water on board; “(F) provide for the keeping of records that shall be submitted to the Secretary, as prescribed by the guidelines, and that shall be maintained on board each vessel and made available for inspection, upon request of the Secretary and in a manner consistent with subsection (i), in order to enable the Secretary to determine compliance with the guidelines, including— “(i) with respect to each ballast water exchange referred to in clause (ii), reporting on the precise location and thoroughness of the exchange; and “(ii) any other information that the Secretary considers necessary to assess the rate of effective compliance with the guidelines; “(G) provide for sampling procedures to monitor compliance with the guidelines; “(H) take into consideration— “(i) vessel types; “(ii) variations in the characteristics of point of origin and receiving water bodies; “(iii) variations in the ecological conditions of waters and coastal areas of the United States; and “(iv) different operating conditions; “(I) be based on the best scientific information available; “(J) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and “(K) provide an exemption from ballast water exchange requirements to passenger vessels with operating ballast water systems that are equipped with treatment systems designed to kill aquatic organisms in ballast water, unless the Secretary determines that such treatment systems are less effective than ballast water exchange at reducing the risk of transfers of invasive species in the ballast water of passenger vessels; and “(L) not apply to crude oil tankers engaged in the coastwise trade.’

‘(3) Education and technical assistance programs.— Not later than 1 year after the date of enactment of the National Invasive Species Act of 1996, the Secretary shall carry out education and technical assistance programs and other measures to encourage compliance with the guidelines issued under this subsection.

(f) National ballast information clearinghouse.— (1) In general.—The Secretary shall develop and maintain, in consultation and cooperation with the Task Force and the Smithsonian Institution (acting through the Smithsonian Environmental Research Center), a
clearinghouse of national data concerning—(A) ballasting practices; (B) compliance with
the guidelines issued pursuant to section 1101(c); and (C) any other information obtained
by the Task Force under subsection (b).‘

‘(g) SANCTIONS.—“

(1) CIVIL PENALTIES.—Any person who violates a regulation promulgated under subsection (b) or
(f) shall be liable for a civil penalty in an amount not to exceed $25,000. Each day of a
continuing violation constitutes a separate violation. A vessel operated in violation of the
regulations is liable in rem for any civil penalty assessed under this subsection for that
violation

‘(i) CONSULTATION WITH CANADA, MEXICO, AND OTHER FOREIGN GOVERNMENTS.—In developing the
guidelines issued and regulations promulgated under this section, the Secretary is
encouraged to consult with the Government of Canada, the Government of Mexico, and
any other government of a foreign country that the Secretary, in consultation with the Task
Force, determines to be necessary to develop and implement an effective international
program for preventing the unintentional introduction and spread of nonindigenous
species.

‘(j) INTERNATIONAL COOPERATION.—The Secretary, in cooperation with the International Maritime
Organization of the United Nations and the Commission on Environmental Cooperation
established pursuant to the North American Free Trade Agreement, is encouraged to enter
into negotiations with the governments of foreign countries to develop and implement an
effective international program for preventing the unintentional introduction and spread of
nonindigenous species.

SEC. 1103. ARMED SERVICES BALLAST WATER PROGRAMS.

‘(a) DEPARTMENT OF DEFENSE VESSELS.—Subject to operational conditions, the Secretary of
Defense, in consultation with the Secretary, the Task Force, and the International Maritime
Organization, shall implement a ballast water management program for seagoing vessels of
the Department of Defense to minimize the risk of introduction of nonindigenous species
from releases of ballast water.

‘(b) COAST GUARD VESSELS.—Subject to operational conditions, the Secretary, in consultation
with the Task Force and the International Maritime Organization, shall implement a ballast
water management program for seagoing vessels of the Coast Guard to minimize the risk of
introduction of nonindigenous species from releases of ballast water

“Subtitle C—Prevention and Control of Aquatic Nuisance Species Dispersal”.‘

‘(C) VOLUNTARY GUIDELINES.—Not later than 1 year after the date of enactment of this
subparagraph, the Task Force shall develop and submit to the Secretary voluntary
guidelines for controlling the spread of the zebra mussel and, if appropriate, other aquatic
nuisance species through recreational activities, including boating and fishing. Not later
than 4 months after the date of such submission, and after providing notice and an
opportunity for public comment, the Secretary shall issue voluntary guidelines that are
based on the guidelines developed by the Task Force under this subparagraph.”;‘
(b) **Western Regional Panel.**—Not later than 30 days after the date of enactment of the National Invasive Species Act of 1996, the Task Force shall request a Western regional panel, comprised of Western region representatives from Federal, State, and local agencies and from private environmental and commercial interests, to—"(1) identify priorities for the Western region with respect to aquatic nuisance species; "(2) make recommendations to the Task Force regarding an education, monitoring (including inspection), prevention, and control program to prevent the spread of the zebra mussel west of the 100th Meridian pursuant to section 1202(i) of this Act; "(3) coordinate, where possible, other aquatic nuisance species program activities in the Western region that are not conducted pursuant to this Act; "(4) develop an emergency response strategy for Federal, State, and local entities for stemming new invasions of aquatic nuisance species in the region; "(5) provide advice to public and private individuals and entities concerning methods of preventing and controlling aquatic nuisance species infestations; and "(6) submit annually a report to the Task Force describing activities within the Western region related to aquatic nuisance species prevention, research, and control. 

(c) **Additional Regional Panels.**—The Task Force shall—"(1) encourage the development and use of regional panels and other similar entities in regions in addition to the Great Lakes and Western regions (including providing financial assistance for the development and use of such entities) to carry out, with respect to those regions, activities that are similar to the activities described in subsections (a) and (b); and "(2) cooperate with regional panels and similar entities that carry out the activities described in paragraph (1).".

- **Hawaii Tropical Forest Recovery Act 1992**
  [See www.state.hi.us/dlnr/dofaw/pubs/HITropicalForestRecoveryPlan.pdf]

- **NonIndigenous Aquatic Nuisance Prevention and Control Act of 1990**
  [Also see National Invasive Species Act 1996, which repeats much of this Act]

Subtitle C—Prevention and Control of Aquatic Nuisance Species Dispersal

SEC. 1201. ESTABLISHMENT OF TASK FORCE.

(a) **Task Force.**—There is hereby established an “Aquatic Nuisance Species Task Force”.

(f) **Coordination.**—Each Task Force member shall coordinate any action to carry out this subtitle with any such action by other members of the Task Force, and regional, State and local entities.

SEC. 1202. AQUATIC NUISANCE SPECIES PROGRAM.

a) **In General.**—The Task Force shall develop and implement a program for waters of the United States to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information.

(b) **Content.**—The program developed under subsection (a) shall—(1) identify the goals, priorities, and approaches for aquatic nuisance species prevention, monitoring, control, education and research to be conducted or funded by the Federal Government; (2) describe the specific prevention, monitoring, control, education and research activities to be conducted by each Task Force member; (3) coordinate aquatic nuisance species programs
and activities of Task Force members and affected State agencies; (4) describe the role of each Task Force member in implementing the elements of the program as set forth in this subtitle; (5) include recommendations for funding to implement elements of the program; and (6) develop a demonstration program of prevention, monitoring, control, education and research for the zebra mussel, to be implemented in the Great Lakes and any other waters infested, or likely to become infested in the near future, by the zebra mussel.

(c) PREVENTION.— (1) IN GENERAL.—The Task Force shall establish and implement measures, within the program developed under subsection (a), to minimize the risk of introduction of aquatic nuisance species to waters of the United States, including— (A) identification of pathways by which aquatic organisms are introduced to waters of the United States; (B) assessment of the risk that an aquatic organism carried by an identified pathway may become an aquatic nuisance species; and (C) evaluation of whether measures to prevent introductions of aquatic nuisance species are effective and environmentally sound. (2) IMPLEMENTATION.—Whenever the Task Force determines that there is a substantial risk of unintentional introduction of an aquatic nuisance species by an identified pathway and that the adverse consequences of such an introduction are likely to be substantial, the Task Force shall, acting through the appropriate Federal agency, and after an opportunity for public comment, carry out cooperative, environmentally sound efforts with regional, State and local entities to minimize the risk of such an introduction.

(d) MONITORING.—The Task Force shall establish and implement monitoring measures, within the program developed under subsection (a), to— (1) detect unintentional introductions of aquatic nuisance species; (2) determine the dispersal of aquatic nuisance species after introduction; and (3) provide for the early detection and prevention of infestations of aquatic nuisance species in unaffected drainage basins.

(e) CONTROL.— (1) IN GENERAL.—The Task Force may develop cooperative efforts, within the program established under subsection (a), to control established aquatic nuisance species to minimize the risk of harm to the environment and the public health and welfare. For purposes of this Act, control efforts include eradication of infestations, reductions of populations, development of means of adapting human activities and public facilities to accommodate infestations, and prevention of the spread of aquatic nuisance species from infested areas. Such control efforts shall be developed in consultation with affected Federal agencies, States, Indian Tribes, local governments, interjurisdictional organizations, and other appropriate entities. Control actions authorized by this section shall be based on the best available scientific information and shall be conducted in an environmentally sound manner. (2) DECISIONS.—The Task Force or any other affected agency or entity may recommend that the Task Force initiate a control effort. In determining whether a control program is warranted, the Task Force shall evaluate the need for control (including the projected consequences of no control and less than full control); the technical and biological feasibility and cost-effectiveness of alternative control strategies and actions; whether the benefits of control, including costs avoided, exceed the costs of the program; the risk of harm to non-target organisms and ecosystems, public health and welfare; and such other considerations the Task Force determines appropriate.
The Task Force shall also determine the nature and extent of control of target aquatic nuisance species that is feasible and desirable.

(f) Research.—(1) Priorities.—The Task Force shall, within the program developed under subsection (a), conduct research concerning—(A) the environmental and economic risks and impacts associated with the introduction of aquatic nuisance species into the waters of the United States; (B) the principal pathways by which aquatic nuisance species are introduced and dispersed; (C) possible methods for the prevention, monitoring and control of aquatic nuisance species; and (D) the assessment of the effectiveness of prevention, monitoring and control methods.

(h) Education.—The Task Force shall, with the program developed under subsection (a), establish and implement educational programs through Sea Grant Marine Advisory Services and any other available resources that it determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of aquatic nuisance species, and control methods for such species, including the prevention of the further distribution of such species.

SEC. 1204. STATE AQUATIC NUISANCE SPECIES MANAGEMENT PLANS.

(a) State or Interstate Invasive Species Management Plans.—

(1) In general.—After providing notice and opportunity for public comment, the Governor of each State may prepare and submit, or the Governors of the States and the governments of the Indian tribes involved in an interstate organization, may jointly prepare and submit—(A) a comprehensive management plan to the Task Force for approval which identifies those areas or activities within the State or within the interstate region involved, other than those related to public facilities, for which technical, enforcement, or financial assistance (or any combination thereof) is needed to eliminate or reduce the environmental, public health, and safety risks associated with aquatic nuisance species, particularly the zebra mussel; and (B) a public facility management plan to the Assistant Secretary for approval which is limited solely to identifying those public facilities within the State or within the interstate region involved for which technical and financial assistance is needed to reduce infestations of zebra mussels.

(2) Content.—Each plan shall, to the extent possible, identify the management practices and measures that will be undertaken to reduce infestations of aquatic nuisance species. Each plan shall—(A) identify and describe State and local programs for environmentally sound prevention and control of the target aquatic nuisance species; (B) identify Federal activities that may be needed for environmentally sound prevention and control of aquatic nuisance species and a description of the manner in which those activities should be coordinated with State and local government activities; (C) identify any authority that the State (or any State or Indian tribe involved in the interstate organization) does not have at the time of the development of the plan that may be necessary for the State (or any State or Indian tribe involved in the interstate organization) to protect public health, property, and the
environment from harm by aquatic nuisance species; and (D) a schedule of implementing the plan, including a schedule of annual objectives, and enabling legislation.

(3) **Consultation.**— (A) In developing and implementing a management plan, the State or interstate organization should, to the maximum extent practicable, involve local governments and regional entities, Indian tribes, and public and private organizations that have expertise in the control of aquatic nuisance species. (B) Upon the request of a State or the appropriate official of an interstate organization, the Task Force or the Assistant Secretary, as appropriate under paragraph (1), may provide technical assistance in developing and implementing a management plan.

(3) **Federal share.**— (A) The Federal share of the cost of each comprehensive management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources. (B) The Federal share of the cost of each public facility management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

SEC. 1206. INTERNATIONAL COOPERATION.

(a) **Advice.**—The Task Force shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest waters shared with other countries.

(b) **Negotiations.**—The Secretary of State, in consultation with the Task Force, is encouraged to initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to aquatic nuisance species infesting shared water resources.

SEC. 1209. BROWN TREE SNAKE CONTROL PROGRAM.

The Task Force shall, within the program developed under subsection (a), undertake a comprehensive, environmentally sound program in coordination with regional, territorial, State and local entities to control the brown tree snake (Boiga irregularis) in Guam and other areas where the species is established outside of its historic range.

- **Federal Noxious Weed Act 1974**

Superseded by the Plant Protection Act, except for section 2814 Sec. 2814. Management of undesirable plants on Federal lands

Each Federal agency shall –

(1) designate an office or person adequately trained in the management of undesirable plant species to develop and coordinate an undesirable plants management program for control of undesirable plants on Federal lands under the agency's jurisdiction; (2) establish and adequately fund an undesirable plants management program through the agency's budgetary process; (3) complete and implement cooperative agreements with State agencies regarding the management of undesirable plant species on Federal lands under
the agency’s jurisdiction; and (4) establish integrated management systems to control or contain undesirable plant species targeted under cooperative agreements.

(c) Cooperative agreements with State agencies

(1) In general Federal agencies, as appropriate, shall enter into cooperative agreements with State agencies to coordinate the management of undesirable plant species on Federal lands. A cooperative agreement entered into pursuant to paragraph (1) shall - (A) prioritize and target undesirable plant species or group of species to be controlled or contained within a specific geographic area; (B) describe the integrated management system to be used to control or contain the targeted undesirable plant species or group of species; and (C) detail the means of implementing the integrated management system, define the duties of the Federal agency and the State agency in prosecuting that method, and establish a time frame for the initiation and completion of the tasks specified in the integrated management system.

(e) Definitions

(7) Undesirable plant species The term "undesirable plants" means plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to State or Federal law. Species listed as endangered by the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be designated as undesirable plants under this section and shall not include plants indigenous to an area where control measures are to be taken under this section.

(f) Coordination

(2) Duties The Secretary, in consultation with the Secretary of the Interior, shall - (A) identify regional priorities for noxious weed control; (B) incorporate into existing technical guides regionally appropriate technical information; and (C) disseminate such technical information to interested State, local, and private entities. (3) Cost share assistance The Secretary may provide cost share assistance to State and local agencies to manage noxious weeds in an area if a majority of landowners in that area agree to participate in a noxious weed management program.

▶ National Environmental Policy Act 1970

In environmental impact assessments:

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

▶ Convention on Great Lakes Fisheries between the United States of America and Canada 1955
This Convention shall also apply to the tributaries of each of the above waters to the extent necessary to investigate any stock of fish of common concern, the taking or habitat of which is confined predominantly to the Convention Area, and to eradicate or minimize the populations of the sea lamprey (Petromyzon marinus) in the Convention Area.

ARTICLE IV

The Commission shall have the following duties: (d) to formulate and implement a comprehensive program for the purpose of eradicating or minimizing the sea lamprey populations in the Convention Area;

ARTICLE V

In order to carry out the duties set forth in Article IV, the Commission may: (b) take measures and install devices in the Convention Area and the tributaries thereof for lamprey control;

Federal Insecticide, Fungicide and Rodenticide Act (as amended 2008)

(u) PESTICIDE.—The term “pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest,


(a) REQUIREMENT OF REGISTRATION.—Except as provided by this Act, no person in any State may distribute or sell to any person any pesticide that is not registered under this Act. To the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this Act and that is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18. (B) Any application for registration or an amendment, including biological and conventional pesticides, will be considered for expedited review under this paragraph. An application for registration or an amendment shall qualify for expedited review if use of the pesticide proposed by the application may reasonably be expected to accomplish 1 or more of the following: (i) Reduce the risks of pesticides to human health. (ii) Reduce the risks of pesticides to nontarget organisms. (iii) Reduce the potential for contamination of groundwater, surface water, or other valued environmental resources. (iv) Broaden the adoption of integrated pest management strategies, or make such strategies more available or more effective.


(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

(2) PRIVATE APPLICATOR.—Any private applicator or other person not included in paragraph (1) who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed
a civil penalty by the Administrator of not more than $1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $500 for the first offense nor more than $1,000 for each subsequent offense.

(2) COVERED PESTICIDE REGISTRATION APPLICATIONS.—

(A) IN GENERAL.—An application for the registration of a pesticide covered by this Act that is received by the Administrator on or after the effective date of the Pesticide Registration Improvement Act of 2003 shall be subject to a registration service fee under this section.

Federal Seed Act 1940

§ 201.5 Origin. a) The complete record for any lot of seed of alfalfa, red clover, white clover, or field corn, except hybrid seed corn, shall include a declaration of origin, or information traceable to a declaration of origin or evidence showing that a declaration of origin could not be obtained.

§ 201.7 Purity (including variety). The complete record for any lot of seed shall include (a) records of analyses, tests, and examinations including statements of weed seeds, noxious weed seeds, inert matter, other agricultural seeds, and of any determinations of kind, variety, or type and a description of the methods used; and (b) for seeds indistinguishable by seed characteristics, records necessary to disclose the kind, variety, or type, including a grower's declaration of kind, variety, or type or an invoice, or other document establishing the kind, variety, or type to be that stated, and a representative sample of the seed.

§ 201.16 Noxious-weed seeds

a) Except for those kinds of noxious-weed seeds shown in paragraph (b) of this section, the names of the kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate of occurrence shall not exceed the rate permitted by, the law and regulations of the state into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to the noxious-weed seed content, if necessary to conform to the laws and regulations of the State into which the seed is diverted. (

b) Seeds or bulblets of the following plants shall be considered noxious-weed seeds in agricultural and vegetable seeds transported or delivered for transportation in interstate commerce (including Puerto Rico, Guam, and the District of Columbia). Agricultural or vegetable seed containing seeds or bulblets of these kinds shall not be transported or delivered for transportation in interstate commerce. Noxious-weed seeds include the following species on which no tolerance will be applied:

§ 201.50 Weed seed.
Seeds (including bulblets or tubers) of plants shall be considered weed seeds when recognized as weed seeds by the law or rules and regulations of the State into which the seed is offered for transportation or transported; or by the law or rules and regulations of Puerto Rico, Guam, or District of Columbia into which transported, or District of Columbia in which sold; or found by the Secretary of Agriculture to be detrimental to the agricultural interests of the United States, or any part thereof. Damaged weed seeds and immature seedlike structures, as described in §201.51(b), shall be considered inert matter.

Weed seeds, as defined above in this section, requiring further separation into weed seed and inert matter components are as follows:

(a) The individual seeds are to be removed from fruiting structures such as pods and heads. The seeds are classified as weed seed and the remaining fruiting structures classified as inert matter.

(b) Wild onion and wild garlic (Allium spp.) bulblets that have any part of the husk remaining and are not damaged at the basal end are considered weed seeds regardless of size. Bulblets that are completely devoid of husk, and are not damaged at the basal end, and are retained by a 1/13-inch (1.9 mm) round-hole sieve are considered weed seeds. For wild onion and wild garlic (Allium spp.) bulblets classed as inert matter, refer to §201.51(b)(5).

§ 201.52 Noxious-weed seeds.

(a) The determination of the number of seeds, bulblets, or tubers of individual noxious weeds present per unit weight should be made on at least the minimum quantities listed in §201.46 Table 1: Provided, That if the following indicated numbers of a single kind of seed, bulblet, or tuber are found in the pure seed analysis (or noxious-weed seed examination of a like amount) the occurrence of that kind in the remainder of the bulk examined for noxious-weed seeds need not be noted: 1/2-gram purity working sample, 16 or more seeds; 1-gram purity working sample, 23 or more seeds; 2-gram purity working sample or larger, 30 or more seeds. The seeds per unit weight shall be based on the number of single seeds. The number of individual seeds shall be determined in burs of sandbur (Cenchrus spp.) and cocklebur (Xanthium spp.); in capsules of dodder (Cuscuta spp.); in berries of groundcherry, horsenettle, and nightshade (Solanaceae); and in the fruits of other noxious weeds that contain more than one seed. Refer to §§201.50 and 201.51(b)(4) for the classification of weed seeds and inert matter, respectively.

(b) A noxious-weed seed examination of coated seed samples shall be made by examining approximately 25,000 units obtained in accordance with §201.46(d) and which have been de-coated by the method described in §201.51b(c).

§ 201.65 Noxious weed seeds in interstate commerce. Tolerances for rates of occurrence of noxious-weed seeds shall be recognized and shall be applied to the number of noxious-weed seeds.
That it shall be unlawful for any person to import or offer for entry into the United States any nursery stock unless and until a permit shall have been issued therefor by the Secretary of Agriculture, under such conditions and regulations as the said Secretary of Agriculture may prescribe, and unless such nursery stock shall be accompanied by a certificate of inspection, in manner and form as required by the Secretary of Agriculture, of the proper official of the country from which the importation is made, to the effect that the stock has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests:

Sec. 2. That it shall be the duty of the Secretary of the Treasury promptly to notify the Secretary of Agriculture of the arrival of any nursery stock at port of entry; that the person receiving such stock at port of entry shall, immediately upon entry and before such stock is delivered for shipment or removed from the port of entry, advise the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, of the name and address of the consignee, the nature and quantity of the stock it is proposed to ship, and the country and locality where the same was grown.

Sec. 5. That whenever the Secretary of Agriculture shall determine that the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds, or other plant products not included by the term "nursery stock" as defined in section six of this act may result in the entry into the United States or any of its Territories or District of injurious plant diseases or insect pests, he shall promulgate his determination, specifying the class of plants and plant products the importation of which shall be restricted and the country and locality where they are grown, and thereafter, and until such promulgation is withdrawn, such plants and plant products imported or offered for import into the United States or any of its Territories or Districts shall be subject to all the provisions of the foregoing sections of this act.

Sec. 6. That for the purpose of this act the term "nursery stock" shall include all field-grown florists' stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, building plants, and other herbaceous plants, bulbs, and roots.

Sec. 8. That the Secretary of Agriculture is authorized and directed to quarantine any State, Territory, or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent or control the spread of a dangerous plant disease or insect infestation, new to or not thereby prevalent or distributed within and throughout the United States. That no person shall ship or offer for shipment to any common carrier, nor shall any common carrier receive for transportation or transport, nor shall any person carry or transport from any quarantined State or Territory or District of the United States, or from any quarantined portion thereof, into or through any other State or Territory or District, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any...
dangerous plant disease or insect infestation, specified in the notice of quarantine except as hereinafter provided.;

Sec. 10. That any person who shall violate, any of the provisions of this act, or who shall forge, counterfeit, alter, deface, or destroy any certificate provided for in this act or in the regulations of the Secretary of Agriculture, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court:

Water Resources Development Act 1999

SEC. 205. CONTROL OF AQUATIC PLANTS.

Section 104 of the River and Harbor Act of 1958 (33 U.S.C. 610) is amended— (1) in the first sentence of subsection (a), by striking “water hyacinth, alligator weed, Eurasian water milfoil, melaleuca, and other obnoxious aquatic plant growths, from” and inserting “noxious aquatic plant growths from”;

SEC. 506. PROJECTS FOR IMPROVEMENT OF THE ENVIRONMENT.

Section 1135(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2309a(c)) is amended— (1) by striking “If the Secretary” and inserting the following: “(1) IN GENERAL.—If the Secretary”; and (2) by adding at the end the following: “(2) CONTROL OF SEA LAMPREY.—Congress finds that—“(A) the Great Lakes navigation system has been instrumental in the spread of sea lamprey and the associated impacts on its fishery; and“(B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 2005

SEC. 6006. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS AND ESTABLISHMENT OF NATIVE SPECIES.

(a) MODIFICATION TO NHS/STP FOR ENVIRONMENTAL RESTORATION, POLLUTION ABATEMENT, CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS.— (1) MODIFICATIONS TO NATIONAL HIGHWAY SYSTEM.—Section 103(b)(6) of title 23, United States Code, is amended by adding at the end the following: ““(Q) Environmental restoration and pollution abatement in accordance with section 328.“(R) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.”. (2) MODIFICATIONS TO SURFACE TRANSPORTATION PROGRAM.— Section 133(b) of title 23, is amended by striking paragraph (14) and inserting the following: ““(14) Environmental restoration and pollution abatement in accordance with section 328.“(15) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.”. (b) ELIGIBLE ACTIVITIES.—Chapter 3 of title 23, United States Code, is further amended by adding after section 327 the following:
§ 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

“(a) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for the following activities if such activities are related to transportation projects funded under this title: “(1) Establishment of plants selected by State and local transportation authorities to perform one or more of the following functions: abatement of stormwater runoff, stabilization of soil, and aesthetic enhancement. “(2) Management of plants which impair or impede the establishment, maintenance, or safe use of a transportation system.

“(b) INCLUDED ACTIVITIES.—The establishment and management under subsection (a)(1) and (a)(2) may include— “(1) right-of-way surveys to determine management requirements to control Federal or State noxious weeds as defined in the Plant Protection Act (7 U.S.C. 7701 et seq.) or State law, and brush or tree species, whether native or nonnative, that may be considered by State or local transportation authorities to be a threat with respect to the safety or maintenance of transportation systems; “(2) establishment of plants, whether native or nonnative with a preference for native to the maximum extent possible, for the purposes defined in subsection (a)(1); “(3) control or elimination of plants as defined in subsection (a)(2); “(4) elimination of plants to create fuel breaks for the prevention and control of wildfires; and “(5) training.

“(c) CONTRIBUTIONS.— “(1) IN GENERAL.—Subject to paragraph (2), an activity described in subsection (a) may be carried out concurrently with, in advance of, or following the construction of a project funded under this title. “(2) CONDITION FOR ACTIVITIES CONDUCTED IN ADVANCE OF PROJECT CONSTRUCTION.—An activity described in subsection (a) may be carried out in advance of construction of a project only if the activity is carried out in accordance with all applicable requirements of Federal law (including regulations) and State transportation planning processes.”. (c) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23 is further amended by adding after the item relating to section 327 the following: “328. Eligibility for environmental restoration and pollution abatement. “329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species.”.

Forest Service Organic Administration Act of 1897

Use and Regulation of National Forests. The Secretary of Agriculture may issue regulations permitting settlers, miners, residents and prospectors the free use of timber and stone in national forests for domestic purposes. The Act permits access to national forests for all lawful purposes, including prospecting and locating and developing mineral resources. Settlers may use land within national forests for schools and churches. Waters within national forest boundaries may be used for domestic, mining, milling or irrigation purposes, as governed by state or federal law. States have civil and criminal jurisdiction over persons within national forests, except for violations of federal law. §§ 477-478 and 479-481.

The Act requires the Secretary of Agriculture to protect national forests from fire and depredations. The Secretary may make regulations and establish services necessary to regulate the occupancy and use of national forests and preserve them from destruction.
Persons violating the Act or regulations adopted under the Act are subject to fines or imprisonment, or both. § 551.

- **Multiple-Use Sustained-Yield Act of 1960**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 16 U.S.C. 528À it is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897 (16 U.S.C. 475). Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use of administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

Sec. 2. 16 U.S.C. 529À The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of this Act.

- **Public Rangelands Improvement Act of 1978**

As used in this chapter -

(a) The terms "rangelands" or "public rangelands" means lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for domestic livestock grazing.

(b) The term "allotment management plan" is the same as defined in section 1702(k) of this title, except that as used in this chapter such term applies to the sixteen contiguous Western States.

(c) The term "grazing permit and lease" means any document authorizing use of public lands or lands in national forests in the sixteen contiguous Western States for the purpose of grazing domestic livestock.

(d) The term "range condition" means the quality of the land reflected in its ability in specific vegetative areas to support various levels of productivity in accordance with range management objectives and the land use planning process, and relates to soil quality, forage values (whether seasonal or year round), wildlife habitat, watershed and plant communities, the present state of vegetation of a range site in relation to the potential plant community for that site, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble that of the desired community for that site.
(e) The term "native vegetation" means those plant species, communities, or vegetative associations which are endemic to a given area and which would normally be identified with a healthy and productive range condition occurring as a result of the natural vegetative process of the area.

(f) The term "range improvement" means any activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

(g) The term "court ordered environmental impact statement" means any environmental statements which are required to be prepared by the Secretary of the Interior pursuant to the final judgment or subsequent modification thereof as set forth on June 18, 1975, in the matter of Natural Resources Defense Council against Andrus.

(h) The term "Secretary" unless specifically designated otherwise, means the Secretary of the Interior.

(i) The term "sixteen contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) The Congress therefore hereby establishes and reaffirms a national policy and commitment to:

1. inventory and identify current public rangelands conditions and trends as a part of the inventory process required by section 1711(a) of this title;

2. manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to section 1712 of this title.

Federal Land Policy and Management Act 1976

Sec. 401. [43 U.S.C. 1751] (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of this Act, the grazing fee charge then in effect shall not be altered and shall remain the same until such report...
has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b) (1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or $10,000,000 per annum, whichever is greater \( [P.L. 95-514, 1978] \) of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (43 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the sixteen \( [P.L. 95-514, 1978] \) contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42 of the United States Code.

**Cooperative Forestry Assistance Act of 1978**

2101. Findings, purpose, and policy

(c) Priorities

In allocating funds appropriated or otherwise made available under this chapter, the Secretary shall focus on the following national private forest conservation priorities, notwithstanding other priorities specified elsewhere in this chapter:

1. Conserving and managing working forest landscapes for multiple values and uses.

2. Protecting forests from threats, including catastrophic wildfires, hurricanes, tornados, windstorms, snow or ice storms, flooding, drought, invasive species, insect or disease outbreak, or development, and restoring appropriate forest types in response to such threats.

3. Enhancing public benefits from private forests, including air and water quality, soil conservation, biological diversity, carbon storage, forest products, forestry-related jobs,
production of renewable energy, wildlife, wildlife corridors and wildlife habitat, and recreation.

§ 2103. Forest land enhancement program

(b) Program objectives

In implementing the program, the Secretary shall target resources to achieve the following objectives:

(1) Investing in practices to establish, restore, protect, manage, maintain, and enhance the health and productivity of the nonindustrial private forest lands in the United States for timber, habitat for flora and fauna, soil, water, and air quality, wetlands, and riparian buffers.

(2) Ensuring that afforestation, reforestation, improvement of poorly stocked stands, timber stand improvement, practices necessary to improve seedling growth and survival, and growth enhancement practices occur where needed to enhance and sustain the long-term productivity of timber and nontimber forest resources to help meet future public demand for all forest resources and provide environmental benefits.

(3) Reducing the risks and helping restore, recover, and mitigate the damage to forests caused by fire, insects, invasive species, disease, and damaging weather.

(4) Increasing and enhancing carbon sequestration opportunities.

(5) Enhancing implementation of agroforestry practices.

(6) Maintaining and enhancing the forest landbase and leverage State and local financial and technical assistance to owners that promote the same conservation and environmental values.

(7) Preserving the aesthetic quality of nonindustrial private forest lands and providing opportunities for outdoor recreation.

(f) Approved activities

(1) State list

The Secretary shall develop for each State a list of approved forest activities and practices eligible for cost-share assistance that meets the purposes of the program. The Secretary shall develop the list for a State in consultation with the State forester and the Committee for that State.

(2) Types of activities

Approved activities and practices under paragraph (1) may consist of activities and practices for the following purposes:

(A) The establishment, management, maintenance, and restoration of forests for shelterbelts, windbreaks, aesthetic quality, and other conservation purposes.

(B) The sustainable growth and management of forests for timber production.

(C) The restoration, use, and enhancement of forest wetland and riparian areas.
(D) The protection of water quality and watersheds through—
(i) the planting of trees in riparian areas; and
(ii) the enhanced management and maintenance of native vegetation on land vital to water quality.

(E) The management, maintenance, restoration, or development of habitat for plants, fish, and wildlife.

(F) The control, detection, monitoring, and prevention of the spread of invasive species and pests on nonindustrial private forest lands.

(G) The restoration of nonindustrial private forest land affected by invasive species and pests.

(H) The conduct of other management activities, such as the reduction of hazardous fuels, that reduce the risks to forests posed by, and that restore, recover, and mitigate the damage to forests caused by, fire or any other catastrophic event, as determined by the Secretary.

(I) The development of management plans;

(J) The conduct of energy conservation and carbon sequestration activities.

(K) The conduct of other activities approved by the Secretary, in consultation with the State forester and the appropriate Committees.

International Forestry Cooperation Act

§ 4501. Forestry and related natural resource assistance

(b) Authority for international forestry activities

In support of forestry and related natural resource activities outside of the United States and its territories and possessions, the Secretary of Agriculture may—

(1) provide assistance that promotes sustainable development and global environmental stability, including assistance for—

(A) conservation and sustainable management of forest land;

(B) forest plantation technology and tree improvement;

(C) rehabilitation of cutover lands, eroded watersheds, and areas damaged by wildfires or other natural disasters;

(D) prevention and control of insects, diseases, and other damaging agents;

(E) preparedness planning, training, and operational assistance to combat natural disasters;

(F) more complete utilization of forest products leading to resource conservation;

(G) range protection and enhancement; and

(H) wildlife and fisheries habitat protection and improvement;

Soil Conservation and Domestic Allotment Act
SEC. 387. WILDLIFE HABITAT INCENTIVES PROGRAM.

(a) In General.—The Secretary of Agriculture, in consultation with the State technical committees established under section 1261 of the Food Security Act of 1985 (16 U.S.C. 3861), shall establish a program under the Natural Resources Conservation Service to be known as the “Wildlife Habitat Incentive Program”.

(b) Cost-Share Payments.—Under the program, the Secretary shall make cost-share payments to landowners to develop upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife habitat approved by the Secretary.

(c) Funding.—To carry out this section, a total of $50,000,000 shall be made available for fiscal years 1996 through 2002 from funds made available to carry out subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. seq.).

Fish and Wildlife Coordination Act

16 USC Sec. 661

the Secretary of the Interior is authorized

(1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of said sections;

Endangered Species Act

SEC. 7. (a) Federal Agency Actions and Consultations.—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an “agency action”) is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after
consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).


(15) The Secretary shall develop, submit for review to the Homeland Security Council, and administer a National Incident Management System (NIMS). This system will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among Federal, State, and local capabilities, the NIMS will include a core set of concepts, principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.

(16) The Secretary shall develop, submit for review to the Homeland Security Council, and administer a National Response Plan (NRP). The Secretary shall consult with appropriate Assistants to the President (including the Assistant to the President for Economic Policy) and the Director of the Office of Science and Technology Policy, and other such Federal officials as may be appropriate, in developing and implementing the NRP. This plan shall integrate Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan. The NRP shall be unclassified. If certain operational aspects require classification, they shall be included in classified annexes to the NRP.

(a) The NRP, using the NIMS, shall, with regard to response to domestic incidents, provide the structure and mechanisms for national level policy and operational direction for Federal support to State and local incident managers and for exercising direct Federal authorities and responsibilities, as appropriate.

(b) The NRP will include protocols for operating under different threats or threat levels; incorporation of existing Federal emergency and incident management plans (with appropriate modifications and revisions) as either integrated components of the NRP or as
supporting operational plans; and additional operational plans or annexes, as appropriate, including public affairs and intergovernmental communications.

(c) The NRP will include a consistent approach to reporting incidents, providing assessments, and making recommendations to the President, the Secretary, and the Homeland Security Council.

(d) The NRP will include rigorous requirements for continuous improvements from testing, exercising, experience with incidents, and new information and technologies.

National Invasive Species Management Plan

OBJECTIVE P.1: PREVENT ESTABLISHMENT OF INTENTIONALLY INTRODUCED INVASIVE SPECIES. Develop fair and practical screening processes that evaluate different types of species moving intentionally in trade. Encourage agencies to modify and incorporate the processes into their own regulatory and non-regulatory programs.

- Implementation Task P.1.1: Develop screening processes to evaluate invasiveness of plants which are intended for planting and are moving in trade.

Performance Element P.1.1.1: APHIS publishes proposed rule(s) on intentional introduction of potentially invasive plant species, including mechanisms to evaluate invasiveness potential and restrict introduction of species likely to be invasive.

Lead: USDA (APHIS)

Participants: USTR; USDA (CSREES, ARS, NRCS, FS)

- Implementation Task P.1.2: Develop screening processes to evaluate invasiveness of terrestrial and aquatic nonnative wildlife (e.g., fish, mollusks, crustaceans, mammals, birds, reptiles and amphibians) moving in trade. Performance Element P.1.2.1: Develop a draft screening process.

Leads: DOI (FWS); DOC (NOAA)

Participants: DOI (USGS, NPS); USDA (APHIS, ARS); USTR; EPA

• Implementation Task P.1.3: Develop a process to identify high-priority invasive plants, animals, and plant or animal pathogens for agencies’ actions.

Performance Element P.1.3.1: Prioritization process will be developed and distributed widely via the internet, at www.invasivespecies.gov> and <www.invasivespeciesinfo.gov> for agency use.

Lead: USDA (APHIS)

Participants: USDA (ARS, CSREES, NRCS, ERS); DOI (FWS); USTR
OBJECTIVE P.2: PREVENT ESTABLISHMENT OF UNINTENTIONALLY INTRODUCED INVASIVE SPECIES INTRODUCED THROUGH HIGH RISK PATHWAYS.

- Implementation Task P.2.1: Reduce the movement of invasive plants pests and pathogens with propagative plant material.

Performance Element P.2.1.1: APHIS will publish proposed rule(s) to revise the Quarantine on Plants for Planting (known as “Q37”).

Lead: USDA (APHIS)

Participant: USDA (ARS)

Performance Element P.2.1.2: Contribute to the development of a new International Plant Protection Convention (IPPC) standard for Plants for Planting that protects against pests.

Lead: USDA (APHIS)

Participants: USDA (ARS, FS)

- Implementation Task P.2.2: Sponsor research on new technologies for ballast water management and formally assess their efficacy. Sponsor research on other ship-based pathways, assessing their impacts to the environment.

Performance Element P.2.2.1: Complete a minimum of five full scale projects.

Lead: DOC (NOAA)

Participants: DHS (CG); DOI; DOT (OST, MARAD, SLSDC); EPA; DOD (COE)

Performance Element P.2.2.2: Initiate other ship-based pathways studies.

Leads: DOC (NOAA); DHS (CG)

Participants: EPA; DOT

Performance Element P.2.2.3: Support additional research efforts to mitigate movement of invasive species by aquatic recreation.

Lead: (DOI) FWS

Participants: DOC; DOI (USGS); EPA

- Implementation Task P.2.3: Support efforts in new techniques or practices to reduce the spread of aquatic invasive species through recreational activities.

Performance Element P.2.3.1: Reduce the spread of zebra and quagga mussels in the Western United States.
Implementation Task P.2.4: Reduce movement of invasive species on or in Solid Wood Packing Materials (SWPM).

Performance Element P.2.4.1: Evaluate the importance of residual bark on SWPM, and take appropriate management or regulatory measures.

Lead: USDA (APHIS)
Participants: USDA (FS, ARS); DHS; USTR

OBJECTIVE P.3: IMPROVE THE INTERNATIONAL, FEDERAL, STATE, AND TRIBAL STANDARDS AND GUIDELINES TO PROTECT THE UNITED STATES FROM INVASIVE SPECIES.

Implementation Task P.3.1: Strengthen and/or support the development of risk-based sanitary and phytosanitary international standards and guidelines under IPPC, Office International des Epizooties (OIE), North American Plant Protection Organization (NAPPO) and other international fora.

Performance Element P.3.1.1: In cooperation with others, APHIS will approve and implement sanitary and phytosanitary standards developed in the appropriate international fora.

Lead: USDA (APHIS)
Participants: DOS; USDA (ARS); NISC; USTR; EPA; DOI (FWS)

Performance Element P.3.1.2: Provide training and capacity building for developing nations to assist them in understanding, adopting, and implementing international standards and guidelines for sanitary and phytosanitary measures.

Lead: USDA (FAS)
Participants: USDA (APHIS); DOI (FWS, USGS); USAID; USTR

Implementation Task P.3.2: Improve and expand domestic and international risk analysis processes. Include new risk methodologies and scientific advances in understanding invasive species. Expand the scope of conducting risk assessments to include all nonnative terrestrial and aquatic organisms moved as a result of human activity or action.

Performance Element P.3.2.1: Revise 1996 Aquatic Nuisance Species Task Force (ANSTF) risk analysis process; submit draft for review in 24 months, and finalize in 36 months.

Leads: DOC (NOAA); DOI (USGS); ANSTF
Participants: NISC, DOI (FWS); DOS; EPA; USDA (APHIS, ARS); DOD (COE); USTR
Performance Element P.3.2.2: Provide training and capacity building for developing nations to assist them in utilizing new risk assessment methodologies and incorporate scientific advances in the understanding of invasive species.

**Lead: USDA (FAS)**

**Participants: USDA (APHIS, ARS); USAID; DOS**

Performance Element P.3.2.3: Provide training in Hazard Analysis and Critical Control Points (HACCP) and other risk-based methods to minimize introduction of invasive species.

**Lead: DOI (FWS)**

**Participants: USDA (APHIS); DOC (NOAA)**

- Implementation Task P.3.3: Design a process to identify and rank pathways by invasive species risk. Encourage agencies to modify and incorporate the process into their own regulatory and nonregulatory programs.

Performance Element P.3.3.1: Prepare a final draft of the pathway analysis process in 24 months; complete, **distribute and encourage use** in 36 months.

**Lead: USDA (APHIS)**

**Participants: DOC (NOAA); DOI (FWS, USGS); USDA (FS, ARS); EPA; USTR; NISC Staff**

- Implementation Task 3.4: Integrate agency data sets to improve assessment of invasive species threats prior to arrival.

Performance Element P.3.4.1: Three (3) or more data sets are integrated and utilized.

**Lead: USDA (APHIS)**

**Participants: USDA (ARS, FS, CSREES, NRCS); DHS**

Implementation Task P.3.5: Support efforts by non-federal stakeholders to develop/enhance codes of conduct and Best Management Practices (BMPs).

Performance Element P.3.5.1: Encourage non-federal stakeholders to publish codes of conduct and BMPs on the Web.

**Lead: NISC Staff**

**Participants: DOC (NOAA); DOI (FWS, BLM); USDA (APHIS, FS, NRCS, ARS); DOS**

- Implementation Task P.3.6: Share BMPs among NISC members to prevent or mitigate invasive species establishment or movement.

Performance Element P.3.6.1: Distribute any new BMPs that NISC Staff are made aware of to all relevant NISC members **and other interested parties**.

**Lead: NISC Staff**
DETECTION.

- **Implementation Task EDRR.1.1:** Identify and evaluate monitoring efforts for high-priority invasive species and supporting technological infrastructure including an evaluation of their geographic and temporal coverage.

  **Performance Element EDRR.1.1.1:** Evaluate monitoring efforts for high-priority invasive species and make recommendations to address critical gaps.

  **Leads:** USDA (APHIS); DOI (USGS)

  **Participants:** USDA (ARS, CSREES, FS, NRCS);
  DOI (NPS, FWS, BLM); DOC (NOAA); EPA; DHS; DOD (COE)

- **Implementation Task EDRR.1.2:** Prepare protocols to identify high priority locations for targeted monitoring efforts. Initiate three systematic monitoring pilot programs.

  **Performance Element EDRR.1.2.1:** Develop protocols; select monitoring programs/locations and implement pilot projects.

  **Leads:** DOI (USGS); USDA (APHIS)

  **Participants:** DOI (FWS); DOT; DHS; DOC (NOAA); EPA; USDA (FS, CSREES, ARS)

- **Implementation Task EDRR.1.3:** Improve and support recruitment and training of volunteers for EDRR efforts at the local level, utilizing existing programs and infrastructure (such as Master Gardeners, Master Naturalists, Cooperative Extension, Sea Grant, National Wildlife Refuge “Friends” Groups, 4-H Groups, National Park support groups, and others).

  **Performance Element EDRR.1.3.1:** Develop guidance for volunteer training on at least one monitoring program. Publish guidance on invasivespeciesinfo.gov.

  **Lead:** USDA (APHIS)

  **Participants:** DOI (USGS, FWS, NPS, BLM); USDA (CSREES, FS, ARS, NRCS); DOD (COE); DOC (NOAA)

  **Performance Element EDRR.1.3.2:** Develop at least two citizen-based networks to detect and monitor for new invasive species.

  **Lead:** DOI (FWS)

  **Participants:** DOC (NOAA); DOI (NPS, BLM); USDA (FS, NRCS, CSREES); EPA

**Implementation Task EDRR.1.4:** Enhance plant and animal pathogen detection methods.

**Performance Element EDRR.1.4.1:** Develop enhanced identification methods and supportive technologies for at least one group of pathogens.

**Lead:** USDA (ARS)
OBJECTIVE EDRR.2: MAKE TAXONOMIC INFORMATION MORE READILY AVAILABLE TO GOVERNMENTS AND THE PUBLIC.

• Implementation Task EDRR.2.1: Develop or enhance taxonomic expert lists to facilitate identification of terrestrial and aquatic organisms.

Performance Element EDRR.2.1.1: Identify taxonomic experts for terrestrial plants, invertebrates and vertebrates, plant and animal pathogens, and make their contact information available, as appropriate.

Leads: USDA (ARS); SI

Participants: USDA (APHIS, CSREES, NRCS); DOI (USGS)

Performance Element EDRR.2.1.2: Finalize and maintain an updated database of taxonomic experts who can identify invertebrate and vertebrate aquatic species.

Leads: DOC (NOAA); DOI (USGS)

Participants: USDA (APHIS)

OBJECTIVE EDRR.3: DEVELOP AND ENHANCE CAPACITY AND TOOLS TO SUPPORT EDRR EFFORTS.

• Implementation Task EDRR.3.1: Prepare protocols to evaluate and map invasive species risks.

Performance Element EDRR.3.1.1: Test protocols by mapping current and potential extents of three high-priority invasions.

Leads: USDA (APHIS); DOI (FWS, USGS)

Participants: USDA (CSREES, ERS, FS, NRCS, ARS); DHS; DOC (NOAA); EPA; NASA; DOD (COE)

• Implementation Task EDRR.3.2: Engage risk assessment experts to provide authoritative and timely assessments of current or potential invasions.

Performance Element EDRR.3.2.1: Prepare lists of risk experts for major groups of invasive species (such as plants, terrestrial species, plant pathogens, animal pathogens, or aquatic species.) Identify gaps in available expertise.

Leads: DOI (USGS); USDA (APHIS)

Participants: USDA (ARS, CSREES, ERS, FS, NRCS); DOI (FWS, NPS); DOC (NOAA); DHS; HHS; SI; EPA; DOD (COE)
Implementation Task EDRR.3.3: Develop and evaluate the use of predictive models to forecast the spread of specific invasive species.

Performance Element EDRR.3.3.1: Develop and test models to forecast spread of two invasive species.

*Leads: DOI (USGS); USDA (ARS)*

*Participants: EPA, USDA (APHIS, CSREES, ERS, FS); DOI (FWS, NPS, BLM); DOC (NOAA); HHS; SI; DOD (COE)*

OBJECTIVE EDRR.4: ENHANCE EXISTING CAPABILITY TO CONDUCT PLANNING FOR EDRR.

- Implementation Task EDRR.4.1: Prepare model guidance or plans that encourage RR contingency planning at the appropriate level (such as, international, national, state, regional or local). Include planning for communications, response funding, cooperative mechanisms and other relevant issues.

Performance Element EDRR.4.1.1: Identify and evaluate existing RR plans and identify effective mechanisms to enhance cooperation among and between state and federal agencies, and make this information available to response agencies.

*Leads: USDA (APHIS); DOC (NOAA)*

*Participants: USDA (CSREES, NRCS, ARS); HHS; EPA; DOD; NASA; DOD (COE); DOI (FWS)*

Performance Element EDRR.4.1.2: Identify and describe existing international EDRR cooperation efforts among regional neighbors and trading partners.

*Leads: DOS; USTR; NISC Staff*

*Participants: All NISC Members*

OBJECTIVE EDRR.5: DEVELOP OPTIONS PAPER TO FUND RAPID RESPONSE EFFORTS.

- Implementation Task EDRR.5.1: Work with ISAC, states and others to develop mechanisms for cooperation and funding rapid response efforts, such as options for matching grants to states.

Performance Element EDRR.5.1.1: Explore and prepare options for cooperation and funding RR; and submit to NISC for discussion and selection of preferred alternative(s).

*Lead: NISC Staff*

*Participants: DOI (FWS, BLM, NPS); DOD (COE)*

Implementation Task EDRR.5.2: Explore options for research funding for preparedness and other programs that are required for RR.

Performance Element EDRR 5.2.1: Prepare and submit to NISC options for funding research for EDRR.
OBJECTIVE CM.1: EVALUATE CONTROL AND MANAGEMENT CAPABILITIES AND IDENTIFY STRATEGIC GAPS.

Implementation Task CM.1.1: Identify and evaluate regional invasive species control and management efforts.

Performance Element CM.1.1.1: Identify and evaluate three regional control and management efforts including their geographic coverage (such as, regions, states or countries within North America.)

Lead: DOI (BLM)

Participants: DOI (FWS, BOR, NPS) DOD (COE); USDA (CSREES, NRCS, APHIS)

Performance Element CM.1.1.2: Benchmark, compare and report on at least three control programs within broader regional efforts.

Lead: USDA (APHIS)

Participants: USDA (FS, NRCS, ARS)

Implementation Task CM.1.2: Identify and address strategic gaps in regional invasive species control and management efforts and tools. Performance Element CM.1.2.1: Identify three priority species or locations (including international border locations, if appropriate) that need additional or enhanced control methods.

Lead: NISC Staff (to collate information)

Participants: DOI (FWS, BLM, NPS, USGS, BOR); USDA (NRCS, APHIS); DOS; DOC (NOAA); DOD (COE)

Performance Element CM.1.2.2: Evaluate, develop or enhance three or more biological, chemical, physical or other control methods.

Leads: USDA (ARS); DOI (USGS); DOD (COE)

Participants: USDA (FS, NRCS, APHIS) ; DOI (FWS)

Performance Element CM.1.2.3: Increase acres of land or water included in regional invasive species control and management programs.

Lead: NISC Staff (to collate information)

Participants: USDA (NRCS, APHIS); DOI (FWS, BLM, NPS);
DOD; DOD (COE)

OBJECTIVE CM.2: REDUCE THE SPREAD AND HARM CAUSED BY INVASIVE SPECIES.
• Implementation Task CM.2.1: Reduce the spread of invasive species.

Performance Element CM.2.1.1: Increase the number of cleaning treatments conducted to address pathways of spread such as potentially contaminated equipment, hikers, anglers, recreation vehicles, watercraft or other conveyances. Monitor effectiveness.

Leads: USDA (FS); DOD (COE); DOI (BLM)
Participants: USDA (APHIS, NRCS); DOT; DOI (NPS, FWS)

Performance Element CM.2.1.2: Increase the number of acres treated. Encourage state and private sector partners to take steps to reduce the spread of invasive species by utilizing protective measures such as, requiring the use of weed-free forage, mulch, seed, gravel and other materials; restricting the movement of contaminated firewood and having live bait restrictions or other methods that reduce the spread of invasive species.

Lead: DOI (BLM)
Participants: USDA (APHIS, NRCS); DOI (NPS, FWS); DOD (COE)

Implementation Task CM. 2.2: Support on-the-ground control and management efforts.

Performance Element CM.2.2.1: Increase the percentage of high priority, at-risk acres treated according to science-based plans that monitoring has demonstrated to have been implemented successfully.

Lead: NISC Staff (to collate information)
Participants: USDA (APHIS, FS, ARS); DOD (COE)

Performance Element CM.2.2.2: Increase the ratio of projects technically supported vs. the total number of on-the-ground projects requesting technical support.

Lead: NISC Staff (to collate information)
Participants: USDA (APHIS); DOI (BLM, FWS, NPS); DOD (COE)

Performance Element CM. 2.2.3: Increase the number of on-the-ground projects technically supported.

Lead: NISC Staff (to collate information)
Participants: USDA (APHIS, ARS, FS, NRCS); DOD; DOI (BLM, FWS, NPS); DOD (COE)

Performance Element CM. 2.2.4: Increase the number of acres receiving “on-the-ground” control and management treatments.

Lead: NISC Staff (to collate information)
Participants: USDA (APHIS, FS, NRCS, ARS); DOI (BLM, FWS, NPS); DOD (COE)
OBJECTIVE CM.3: DEVELOP WORKFORCE COMPETENCIES TO PERFORM CONTROL AND MANAGEMENT ACTIVITIES.

- Implementation Task CM. 3.1: Increase invasive species training for land and water resource managers, and others as appropriate.

Performance Element CM. 3.1.1: Increase the number of training workshops, training materials developed, and total number of personnel and volunteers trained, including but not limited to, training in Integrated Pest Management.

Leads: USDA (CSREES); DOI (FWS)

Participants: DOI (BLM, NPS); USDA (CSREES, NRCS, ERS, ARS); DOD; DOD (COE)

OBJECTIVE CM.4: ENHANCE ECOSYSTEM RECOVERY PROCESSES THAT CONTRIBUTE TO CONTROL AND MANAGEMENT.

- Implementation Task CM.4.1: Enhance ecosystem recovery decision tools and conduct ecosystem assessments.

Performance Element CM.4.1.1: Increase the efficiency, accuracy, and precision of monitoring and mapping operations.

Lead: DOI (USGS)

Participants: USDA (APHIS, NRCS, ARS, ERS, CSREES); NASA; DOD (COE)

Performance Element CM.4.1.2: Enhance ecosystem recovery models and evaluate ecosystem assessment methods.

Lead: DOD (COE)

Participants: DOI (USGS); USDA (FS, ARS, CSREES)

Performance Element CM.4.1.3: Report the number of acres and species monitored and mapped.

Lead: NISC Staff (to collate information)

Participants: DOI (USGS, FWS, BLM); USDA (FS, NRCS, ARS); NASA; DOD (COE)

OBJECTIVE R.1: INCLUDE INVASIVE SPECIES CONSIDERATIONS IN FORMAL GUIDANCE FOR RESTORATION PROJECTS.

- Implementation Task R.1.1: Address invasive species concerns in planning for restoration projects in federal land and water management field and guidance manuals.

Performance Element R.1.1.1: Amend existing or develop new land use planning protocols and Best Management Practices within federal agencies to include restoration activities to mitigate impacts of invasive species.

Leads: DOI (NPS, BLM); USDA (FS)
Participants: DOI (FWS); USDA (NRCS); DOD (COE and other agencies); DOC (NOAA)

Performance Element R.1.1.2: Identify sources of native and appropriate nonnative materials for restoration projects carried out by federal agencies.

Leads: DOI (NPS); USDA (NRCS)

Participants: USDA (FS, CSREES, ARS); DOD (COE and other agencies); DOI (FWS, BLM)

Performance Element R.1.1.3: Incorporate invasive species prevention plans, such as those that utilize HACCP, into federally-funded or authorized restoration projects.

Lead: NISC Staff (to collate information)

Participants: DOI (BIA, BLM, BOR, FWS, NPS); USDA (FS, NRCS); EPA; DOD; NOAA

OBJECTIVE R.2: RESTORE HIGH-VALUE AREAS IMPACTED BY INVASIVE SPECIES.

• Implementation Task R.2.1: Restore sites that have the highest ecological or economic value or contribute most to protecting human health.

Performance Element R.2.1.1: Conduct and report on four interagency restoration projects that demonstrate the success of information sharing, plant (and animal) materials sharing, techniques for cost-effective modeling, and documentation of results, including decision support tools.

Leads: NISC staff, DOI (FWS, BLM, NPS); USDA (NRCS); DOD (COE)

Participants: DOI (BOR, USGS); DOD; USDA (APHIS, FS, ARS); EPA

Performance Element R.2.1.2: Provide technical assistance on the species and methods to use in restoring native species, including the use of low impact, nonnative or “transitional” species where appropriate.

Leads: DOI (FWS); USDA (NRCS); DOD (COE)

Participants: DOI (NPS, BLM, BOR, USGS); USDA (FS, APHIS, ARS)

Performance Element R.2.1.3: Provide technical assistance on site selection, site modification, and prioritization for restoration projects.

Leads: DOI (FWS, USGS); DOD (COE)

Participants: DOI (NPS, BLM, BOR); USDA (APHIS, NRCS)

Performance Element R.2.1.4: Conduct at least four (4) information sharing projects with stakeholders about invasive species restoration projects.

Lead: USDA (NRCS)

Participants: USDA (APHIS, ARS); DOD; DOI (FWS, USGS); DOC (NOAA)

OBJECTIVE R.3: RESTORE HABITAT AT MULTIPLE SCALES AND DEMONSTRATE MODEL APPROACHES THAT ENGAGE LOCAL COMMUNITIES AND THE PUBLIC.
• Implementation Task R.3.1: Coordinate multi-taxon restoration projects at the regional, watershed or landscape level (Healthy Lands Initiative, for example), addressing water quality, fisheries (both fresh and marine), and terrestrial plants and animals (including their pests and pathogens) in restoration planning.

Performance Element R.3.1.1: Work across agencies to create demonstration projects in at least three geographic or regional focus areas over the next three years.

Leads: DOI (FWS, NPS, BLM); DOD (COE)
Participants: DOI (BOR, USGS); DOC (NOAA); EPA

Performance Element R.3.1.2: Document four successful restoration projects involving recovery from invasive species impacts, for example on private lands or in coastal environments, with nongovernmental cooperators.

Leads: NISC staff; DOI (FWS); DOD (COE)
Participants: EPA; DOD

Performance Element R.3.1.3: Document four successful fire rehabilitation and fuels treatment projects involving recovery from invasive species impacts on different kinds of public lands (such as range, forest, shrub, and steppe).

Leads: NISC staff; USDA (FS); DOI (BLM)
Participants: DOI (OWFC, FWS, NPS, BIA)

OBJECTIVE OC.1: IMPROVE KNOWLEDGE AND UNDERSTANDING OF LEGAL AND REGULATORY TOOLS AVAILABLE TO ADDRESS INVASIVE SPECIES.

• Implementation Task OC.1.1: Complete an analysis of current federal laws and regulations dealing with invasive species.

Performance Element OC.1.1.1: Complete a brief status report based on the existing legal and regulatory analyses.

Lead: NISC Staff
Participants: DOI; USDA; DOC and other NISC members as appropriate

• Implementation Task OC.1.2: Provide information and briefings as requested on invasive species issues.

Performance Element OC.1.2.1: NISC will respond to requests for information or briefings within 30 days.

Lead: NISC Staff
Participants: NISC members as appropriate
OBJECTIVE OC.2: EXPAND THE COORDINATION OF INVASIVE SPECIES PROGRAMS AND EXPENDITURES TO LEVERAGE RESOURCES.

- Implementation Task OC.2.1: Update the invasive species crosscut budget for Federal agency expenditures concerning invasive species, changing its name to the Invasive Species Inter-Agency Performance Budget (Performance Budget). Request input from ISAC, ANSTF, Federal Interagency Committee on the Management of Noxious and Exotic Weeds (FICMNEW), and the Federal Interagency Committee on Invasive Terrestrial Animals and Pathogens (ITAP) on initiatives to be included in future Performance Budgets.

Performance Element OC.2.1.1: Complete Performance Budgets for fiscal years 2010, 2011, 2012 and 2013 as directed, along with reports on prior year’s performance.

Lead: NISC Staff
Participants: All NISC members

OBJECTIVE OC.3: IMPROVE FEDERAL RESEARCH CAPACITY AND COORDINATION TO ADDRESS A BROADER ARRAY OF INVASIVE SPECIES ISSUES.

- Implementation Task OC.3.1: Improve the coordination and effectiveness of federal research.

Performance Element OC.3.1.1: Establish an Invasive Species Working Group under the OSTP/Committee on Environment and Natural Resources/Subcommittee on Ecological Systems, to coordinate existing federal invasive species research activities and outline federal research priorities by February 2009.

Lead: DOI (USGS)
Participants: DOC (NOAA); EPA; DOD; NASA; DOS

Performance Element OC.3.1.2: Provide research results on invasive species or summaries, as appropriate, and take steps to make information provided by agencies more readily available.

Lead: USDA (ARS/NAL)
Participants: NISC Staff; USDA (ARS, FS, ERS, CSREES); DOI (USGS); EPA; DOC (NOAA); NASA; DOD

- Implementation Task OC.3.2: Improve economic modeling of invasive species impacts.

Performance Element OC 3.2.1: Improve modeling of invasive species prevention actions to determine their costs and benefits.

Lead: USDA (ERS)
Participants: EPA
USA

Performance Element OC 3.2.2: Improve economic modeling of control and management actions to determine their costs and benefits.

Lead: USDA (ERS)

Participant: DOC (NOAA); EPA

Performance Element OC 3.2.3: Develop cost and benefit analysis models of alternative control methods.

Leads: USDA (FS, CSREES, NRCS, APHIS, ERS)

Participants: None

OBJECTIVE OC.4: ENHANCE POLICY AND IMPROVE REGULATORY PROCESSES ON INVASIVE SPECIES.

• Implementation Task OC.4.1: As required by EO 13112, prepare, in cooperation with the President's Council on Environmental Quality (CEQ), guidance to federal agencies to prevent and control invasive species that is fully compliant with the National Environmental Policy Act (NEPA).

Performance Element OC.4.1.1: Prepare draft NEPA guidance for CEQ consideration and finalize.

Leads: NISC Staff, CEQ

Participants: All NISC members

• Implementation Task OC.4.2: Collect, organize and make available federal agency guidance to prevent, control and manage invasive species.

Performance Element OC.4.2.1: Each NISC agency shall make available their existing policies on prevention, EDRR, and control of invasive species.

Lead: NISC Staff

Participants: All NISC members

• Implementation Task OC.4.3: Develop an improved regulatory process for the development, testing, assessment and approval of biological control agents.

Performance Element OC.4.3.1: Implement improved regulatory process.

Lead: USDA (APHIS)

Participants: USDA (ARS, CSREES, NRCS)

OBJECTIVE OC.5: STRENGTHEN COORDINATION AMONG FEDERAL AGENCIES TO FACILITATE THE DEVELOPMENT OF INTERNATIONAL PRIORITIES FOR INVASIVE SPECIES.
Implementation Task OC.5.1: Promote and facilitate communication on international invasive species issues and activities.

Performance Element OC.5.1.1: NISC staff prepares the monthly report of upcoming international meetings on invasive species to be distributed to federal agencies and others.

Leads: NISC Staff; DOS

Participants: USTR, USAID, DHS, EPA; DOD (COE)

Implementation Task OC.5.2: Represent NISC interests in the formulation of United States policy positions related to invasive species in the context of discussions under relevant international organizations and agreements, e.g. Convention on Biological Diversity (CBD), International Plant Protection Convention (IPPC), Organisation International de Epizooties (OIE), World Health Organization (WHO), Food and Agriculture Organization (FAO), International Maritime Organization (IMO) and other relevant global or regional fora.

Performance Element OC.5.2.1: In cooperation with federal agencies, NISC will contribute to the development of United States positions on invasive species during preparation for relevant international meetings.

Leads: DOS; NISC Staff

Participants: NISC members as appropriate

Implementation Task OC.5.3: As appropriate, seek to incorporate invasive species issues into the environmental cooperation mechanisms developed in connection with free trade agreements (FTA).

Performance Element OC.5.3.1: Department of State-led interagency working groups on FTA environmental cooperation mechanisms will assist in developing cooperative activities related to invasive species.

Lead: DOS

Participants: USTR, EPA, DOI, USDA (FAS, ERS, ARS, APHIS); DOC

Objective OC.6: Enhance Outreach on Invasive Species.

Implementation Task OC.6.1: Determine approaches regarding invasive species pathways for strategic outreach to targeted user groups and businesses.

Performance Element OC.6.1.1: Develop outreach materials for target audiences cooperatively with relevant stakeholders and make available through the internet.

Leads: DOC (NOAA); USDA (APHIS)

Participants: USDA (FS, NRCS, ARS, FAS); DOI (FWS)
USA

- Implementation Task OC.6.2: Work with existing educational organizations to enhance invasive species information delivery to primary and secondary educators.

Performance Element OC.6.2.1: Information about at least eight invasive species or federal invasive species programs provided to educational organizations/invasive species outreach programs and reported to the NISC staff.

Lead: NISC staff

Participants: All NISC Members

- Implementation Task OC.6.3: Develop basic messages for common public awareness concerning invasive species for NISC member agencies and staff to utilize.

Performance Element OC.6.3.1: Communicate clear and consistent general messages on invasive species to all NISC members and stakeholders, so that they may include these points when a new invasive species action, regulation or policy is announced. Communicate via the Internet.

Lead: NISC Staff

Participants: All NISC members

OBJECTIVE OC.7: IMPROVE AND STREAMLINE NISC MEMBERS’ REPORTING ON INVASIVE SPECIES PROGRAMS AND ACTIVITIES.

- Implementation Task OC.7.1: The following reports are required.

Performance Element OC.7.1.1: Each NISC member submits one formal (draft and final) report per fiscal year, tracking the implementation of the NISC 2008 Plan. NISC Staff will complete a streamlined reporting template within three months. Annual summary report by NISC is available on its website by February 28 of each year along with the individual NISC member reports.

Lead: NISC Staff

Participants: All NISC Members

Performance Element OC.7.1.2: NISC members provide a consistently formatted written report in response to ISAC recommendations, action items and requests.

Lead: NISC staff (in consultation with ISAC)

Participants: All NISC Members

Performance Element OC.7.1.3: Report on agency participation in the NISC Invasive Species Performance (Crosscut) Budget.

Lead: NISC Staff

Participants: All NISC Members
OBJECTIVE OC.8: ENHANCE DATA STANDARDS AND QUALITY TO IMPROVE ACCESS AND ABILITY TO SEARCH ACROSS DATA BASES AND FEDERAL DATA SOURCES.

- Implementation Task OC.8.1: Develop and provide portal and reference information, as well as public access to federal research information, as appropriate and consistent with applicable law.

Performance Element OC.8.1.1: Summarize research results on invasive species and take steps to make it more readily available based on information provided by agencies.

Lead: USDA (ARS/NAL)

Participants: NISC Staff; All NISC Members

Performance Element OC.8.1.2: Enhance and maintain the NISC website to provide an overview of federal invasive species efforts and policies; access to, and information about NISC member agencies and their invasive species programs and information about NISC, its activities, the Invasive Species Management Plan, and ISAC.

Lead: NISC Staff

Participants: All NISC Members

Performance Element OC.8.1.3: The Invasive Species Compendium will be developed by interested agencies.

Lead: USDA (ARS)

Participants: USDA (APHIS, CSREES, NRCS); DOC (NOAA)

Performance Element OC.8.1.4: Share information on federal invasive species grant opportunities and programs by linking from the NISC website to grant information on existing agency websites.

Lead: NISC Staff

Participants: All NISC Members

- Implementation Task OC.8.2: Work cooperatively to develop common data standards and enhance databases.

Performance Element OC.8.2.1: Improve and expand participation in the aquatic invasive species information system NISbase.

Leads: DOI (USGS); DOC (NOAA), SI

Participants: DOI (FWS, BLM); DOD (COE); USDA (APHIS)

Performance Element OC.8.2.2: Link and expand databases of invasive plant pathogens.

Lead: USDA (ARS)

Participants: USDA (FS, APHIS)
USA

Performance Element OC.8.2.3: Develop and implement an invasive species pathways database.

Lead: USDA (APHIS)

Participants: USDA (ARS, FAS); Other NISC agencies

Performance Element OC.8.2.4: Enhance the PLANTS database in regard to invasive species and pollinators.

Lead: USDA (NRCS)

Participants: USDA (ARS, FS, APHIS)

Performance Element OC.8.2.5: Improve and expand the U.S. Government’s participation in the Global Invasive Species Information Network (GISIN) and the Inter-American Biodiversity Information Network (IABIN).

Lead: DOI (USGS)

Participants: DOS; DHS; NASA