

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Economic Growth and Infrastructure Committee

Streamlining the regulatory regime for pest control

Proposal

- 1 I am seeking approval to release a consultation document proposing regulations that would remove regulatory duplication for vertebrate pest control.
- 2 This proposal would remove current controls under the Resource Management Act 1991 (RMA) that apply to the use of 1080 and brodifacoum to control pest mammals, and the use of rotenone to control pest fish. The regulations would also cover other vertebrate toxic agents (VTAs) that are subsequently approved through a full assessment under the Hazardous Substances and New Organisms Act 1996 (HSNO Act).

Executive summary

- 3 VTAs are a vital tool for protecting New Zealand's biodiversity and primary industries. Aerial drops of VTAs are the only cost-effective way to control pest mammals across much of New Zealand's land area, and rotenone is the most effective method for eradicating pest fish from waterways.
- 4 Most regional plans made under the RMA require resource consent for certain uses of 1080, brodifacoum and rotenone. These requirements duplicate the comprehensive controls set under the HSNO Act and other legislation. Approvals of hazardous substances under the HSNO Act are made through a robust assessment process that sets controls to protect both public health and the environment. The HSNO Act is the mechanism that should be used to control and manage safety of VTA use in a consistent manner for the whole country.
- 5 In her 2011 report on the use of 1080, the Parliamentary Commissioner for the Environment (the PCE) recommended that I simplify and standardise the management of 1080 and other VTAs. The attached draft consultation document is my response to that recommendation.
- 6 I am proposing regulations under section 360(1)(h) of the RMA that would remove the duplication between the RMA and HSNO by exempting VTAs from current requirements under section 15 of the RMA under certain conditions. Once the regulations are in place, use of 1080, brodifacoum and rotenone would not need resource consent and would no longer be regulated by regional plans made under the RMA. It is my intention the regulations would also apply to any VTAs that are approved in future following full assessment under section 29 or 63 of the HSNO Act.
- 7 The regulations would include specific conditions to provide for occupier consent, and regional council monitoring and enforcement of controls on VTAs. A summary of the scope of the proposal and the conditions is provided in Appendix 2.

- 8 My proposal would provide direct cost savings of at least \$10.5 million (in net present value terms) for VTA operations by removing the cost of resource consents. It would also allow operators to implement best practice for operations consistently across the country. Lowered costs and improved management for VTA use would support Government actions under the Business Growth Agenda, such as:
- Landscape-scale pest control to protect native species and primary production;
 - Harnessing community support to protect iconic species;
 - Speeding up the 'Predator Free New Zealand' eradication programme.
- 9 The next step towards simplifying the management of VTAs is release of the attached consultation document. While release of the document may cause concern among those who oppose VTA use, I consider that the benefits of my proposal are significant and propose to proceed.
- 10 I propose to release the attached document for public consultation in March through to late April 2016. I will report the outcome of public consultation to the Economic Growth and Infrastructure Committee by June 2016. I anticipate seeking policy approval to draft the proposed regulations at that time.

Background

Vertebrate toxic agents a vital tool for biodiversity and primary industries

- 11 Invasive pests are the greatest single threat to our remaining natural ecosystems and habitats and threatened native species. According to the recent Environment Aotearoa Report, 94% or more of our total land area is affected by possums, rats, and stoats. These pests damage native plants and threaten extinction of New Zealand's iconic bird species such as kiwi, kea and kakapo.
- 12 Pests are estimated to cost New Zealand's primary industries up to \$3.3 billion per year – around \$800 million is invested in biosecurity measures and nearly \$2.5 billion of production is lost. Possums and ferrets are the main vectors for bovine tuberculosis, a disease of farmed cattle and deer that can also affect humans. If possum control is reduced, bovine tuberculosis spread by possums could cost New Zealand an estimated \$6 billion over the next 30 years. Possums also damage young pine trees, making them useless for sawlog growth; and rabbits cause significant damage to agricultural land.
- 13 Pest fish such as koi carp, gambusia and catfish are already common in some regions and are spreading in others. Pest fish degrade water quality and lower populations of native fish, including vulnerable species. Pest fish may also threaten trout, eel and whitebait fisheries.
- 14 VTAs are a vital tool for protecting New Zealand's natural capital. Across most of the country, VTAs are the most effective way to control pest mammals and fish. PCE's 2011 report on the use of 1080 confirmed that trapping and hunting of pest mammals is too costly and difficult for very large, remote or inaccessible areas, with aerial use of 1080 the only viable option for almost all of the conservation estate. Brodifacoum is the only effective tool for completely eradicating rodents from fenced sanctuaries and offshore islands. Where eradication of pest fish is possible, removing valued fish and then treating the water body with the toxin rotenone is usually the most effective method.

Complexity of regulation for vertebrate toxic agents

- 15 The PCE's report on the use of 1080 stated that "the labyrinth of laws, rules and regulations that govern 1080 and the other poisons used to control introduced pests creates unnecessary complexity and confusion." Controls on individual VTA operations are set by a range of agencies, each operating under different legislation.
- 16 The HSNO Act is the primary piece of legislation regulating the use of VTAs to protect public health and the environment. HSNO controls on VTA use can include:
 - A range of restrictions and specifications on where, how and in what form they can be used;
 - Exposure limits for the active ingredient;
 - Requirements for permission – for example, use of aerial 1080 on the conservation estate requires permission of the Department of Conservation (DOC).
- 17 VTAs must also be registered under the Agricultural Compounds and Veterinary Medicines Act 1997 (ACVM Act). This registration imposes conditions such as use in accordance with manufacturer label instructions.
- 18 Special permissions for the use of rotenone to kill pest fish are required under the Fisheries Act 1996 and the Conservation Act 1987.
- 19 In addition to these controls, VTA use is classed as a discharge of contaminants under section 15 of the RMA, unless the VTA is kept contained (e.g. in a bait station). All regional plans made under the RMA require resource consent for some types of VTA operations. However, each region differs in terms of what types of VTA operation need consent, and what conditions need to be satisfied by applicants and consent holders. For example, some regions allow 1080 to be used without resource consent or any information being provided to the council, and others require resource consent for each individual operation.
- 20 The PCE has recommended that I "investigate ways to simplify and standardise the way 1080 and other poisons for pest mammal control are managed..." The attached draft discussion document is my response to that recommendation. I have chosen to focus this action on the requirements under the RMA, because they duplicate other legislation and are not required to protect public health or the environment.

Comment

- 21 I propose to remove current RMA requirements for VTAs that already have comprehensive controls under the HSNO Act and other legislation. A regulation made under section 360(1)(h) of the RMA would exempt VTAs from the requirements of section 15 of the RMA under certain conditions. In effect, exemption from section 15 would mean that users of these VTAs would not need to apply for resource consent or comply with existing consents, and use of these VTAs would no longer be regulated by regional plans made under the RMA.

Problem – RMA controls are duplicative, unnecessary and inconsistent

- 22 RMA rules and consents include requirements already specified in the HSNO Act or in pest management agencies' own good practice guidelines. Also, RMA regional plan hearings, resource consent hearings and appeals to the Environment Court can end up re-litigating the issues and evidence considered during HSNO approval. This duplication does not have any clear benefit, but represents a significant cost for VTA users. At the extreme, consenting costs can be up to 40% of the total cost for a 1080 operation, 27% for an aerial brodifacoum operation and 20% for a rotenone operation.
- 23 Where different controls are set under the RMA, they are often unnecessary in light of the current evidence on the effects of VTAs. For example, in her report on 1080 the PCE noted that no test of drinking water supplies has ever found a trace of 1080 following an operation, stating that "we do not need more water samples to tell us that the way 1080 is used poses no real risk to water." Yet, resource consents sometimes require extensive water monitoring on top of the water monitoring already required by local Medical Officers of Health. Such requirements can inflate both the cost of VTA operations and public perception of the risks involved.
- 24 Finally, inconsistency between the conditions set in different regions and different consents can further increase the cost of VTA operations and reduce their effectiveness. Some regions allow VTAs to be used without resource consent or the provision of any information to the council, while others impose different requirements on a consent by consent basis. This inconsistency prevents pest control agencies and operators from standardising their practices, and operations that cross regional boundaries can be especially problematic. For example, an operation in Kahurangi National Park faced different conditions under the RMA either side of the regional boundary it straddled. To comply with these conditions the operation had to be split into two areas, with a buffer zone through the middle where pests were not controlled.

Scope – VTAs with comprehensive controls under the HSNO Act and other legislation

- 25 I propose the regulations apply to all VTAs approved through a full assessment under sections 63 or 29 of the HSNO Act. Assessments of VTAs under these sections have included reviews of expert evidence and public consultation. 1080 and rotenone have already been through a full assessment and there are mandatory controls that must be followed when they are used for pest control. It is my intention as more VTAs are approved with appropriate controls through full assessments under the HSNO Act, they would also become exempt from requiring resource consents and would not be regulated by regional plans.
- 26 I also propose that the regulations apply to brodifacoum. Under HSNO controls, brodifacoum may be used aerially only on offshore islands and in fenced sanctuaries. All aerial brodifacoum operations in fenced sanctuaries must comply with a Code of Practice registered under the ACVM Act, and non-DOC operations on offshore islands must also comply with this Code. The controls specified in the ACVM Code of Practice are comprehensive, and DOC has robust procedures in place that ensure the safety and effectiveness of their operations on offshore islands.
- 27 Controls and permissions under the HSNO Act, Fisheries Act and Conservation Act provide the necessary protection for public health and the environment during each operation using these VTAs. For example, some of the requirements for aerial use of 1080 that protect public health are public notification of operations, signage to warn

people entering the area where bait has been dropped, and permission from local Medical Officers of Health whenever an operation could potentially pose a risk to public health. DOC officials advise that Medical Officers of Health are also notified of rotenone and aerial brodifacoum operations and provide input when necessary.

- 28 Removing RMA controls will reduce local input on individual VTA operations in most regions. VTAs have been approved at the national level under the HSNO Act, and the need for local input needs to be balanced against the national interests of improved biodiversity and biosecurity.
- 29 The proposed regulations would include conditions giving appropriate oversight of individual VTA operations to land occupiers and regional councils (outlined in full at Appendix 2). The overall effect of these conditions is to ensure that:
- No aerial operation occurs on private land without occupier approval (notwithstanding powers under other legislation that allow approval of pest control operations on private land);¹
 - Regional councils are able to effectively undertake their monitoring and enforcement functions for VTA operations.

Benefits – cost savings

- 30 I expect that my proposal would result in cost savings of at least \$10.5 million (estimated net present value over 20 years). This is a conservative figure based on the expected avoided consenting costs for aerial application of 1080. There would be further cost savings from the avoided cost of consents for rotenone and brodifacoum operations, and of submitting on regional resource management plans.
- 31 Cost savings would benefit the following users of VTAs:
- TB Free NZ (a joint-funded partnership between the Ministry for Primary Industries and industry groups) uses VTAs to control bovine tuberculosis;
 - DoC uses VTAs to control pest mammals on the conservation estate and to prevent the spread of pest fish;
 - Regional councils use VTAs to fulfil their biosecurity functions and would also benefit from reduced planning and consenting costs;
 - Conservation groups use VTAs for pest control and eradication from pest free areas;
 - Land managers sometimes use VTAs to control rabbits and to improve the productivity of plantation forests.
- 32 Cost savings to these parties could be reinvested in pest control operations or in other valued activities in the private and public sector.

¹ Ministry for Primary Industries and regional councils can approve aerial pest control operations in any area under section 114A of the Biosecurity Act 1993. The Director-General of Conservation can approve pest control operations on private land under section 16 of the Wild Animal Control Act 1977 or section 59 of the Wildlife Act.

Benefits – more consistent and effective management of VTAs

- 33 My proposal would make the management of VTA operations nationally consistent. Operations that cross regional boundaries would be more effective and less complex. National consistency would also allow more standardisation of good practice by pest management agencies and operators.
- 34 My proposal would also improve the effectiveness of VTA operations by allowing these substances to be used more readily when and where they are most needed. The process of applying for resource consents, hearings and Environment Court appeals can result in delays for VTA operations. This can make an operation less effective or redundant, especially when the delay is extended or unexpected. For example, 1080 needs to be dropped at specific times to protect native species, especially during beech mast events – large seedfalls during warm years that greatly increase numbers of rats, possums and stoats. The PCE has suggested that the difficulty of gaining resource consent may have stopped some 1080 operations taking place at all.

Benefits – support Government actions for biodiversity and primary production

- 35 Cost savings and improved management for pest mammal control would support the Government's Business Growth Agenda (BGA) action area 'maximise the productivity of agricultural and horticultural land while reducing its environmental effects'. Specifically, my proposal would:
- Help support primary sector growth in the regions by making it cheaper and simpler to implement TBFree NZ's National Pest Management Plan for bovine tuberculosis;
 - Support landscape-scale regeneration, biodiversity protection and pest control partnership programmes, including DoC's planned increase in aerial 1080 operations from 150,000ha to 450,000ha over the next 5 years;
 - Help speed up the Predator Free New Zealand programme allowing new VTAs to be used without resource consent as they are approved under the HSNO and ACVM Acts;
 - Support initiatives to improve the quality of our freshwater, which may include eradication of pest fish.

Monitoring and enforcement – covered by multiple agencies

- 36 In accordance with recent changes in the Health and Safety Reform Act, Worksafe NZ will be responsible for monitoring compliance with controls under the HSNO Act. In addition, the Environmental Protection Authority, local public health officers, the Civil Aviation Authority and the Department of Conservation all undertake compliance and monitoring activity for VTAs.
- 37 While my proposal would allow all regional councils to monitor and enforce VTA operations, councils would no longer be able to recover the cost of monitoring. There is a risk that this could reduce their monitoring activities. However, The EPA advises that the impact of this on the quality of current compliance and enforcement would be negligible, because monitoring by other agencies is sufficient to maintain compliance with controls.

Risk – response from opponents of VTA use

- 38 Opposition to VTA use has been decreasing in recent years, but the release of the discussion document may cause concern among those who continue to oppose the use of VTAs.
- 39 A communications plan has been developed to promote informed public discussion of my proposal by focusing debate on making the regulatory regime for VTAs fit for purpose, rather than whether VTAs should be used at all.

Next steps – release discussion document in March 2016

- 40 I propose to consult on this proposal during March and April 2016. Delaying the release of the consultation document is unlikely to reduce the risk above, and it will mean that more time, money and effort is spent on RMA requirements for VTAs.
- 41 I will report the outcome of public consultation to the Economic Growth and Infrastructure Committee by June 2016. I anticipate seeking policy approval to draft the proposed regulations at that time.

Consultation

- 42 The following agencies have been consulted, and their views have been incorporated into this proposal: Department of Conservation, Te Puni Kokiri, Ministry for Primary Industries, Ministry of Health, Department of Internal Affairs, Ministry of Business, Innovation and Employment, Environmental Protection Authority, Worksafe NZ, Land Information New Zealand, Civil Aviation Authority, Treasury, Ministry of Foreign Affairs and Trade.
- 43 The Ministry of Justice supported my proposal overall, but recommended that I consult Iwi Leaders in confidence before publicly releasing the consultation document.
- 44 The Department of the Prime Minister and Cabinet was informed of this proposal.
- 45 Plans for public consultation are noted above at paragraph 40.

Financial implications

- 46 The proposals in this paper have no direct financial implications.

Human rights

- 47 There are no inconsistencies between the proposals in this paper and the Human Rights Act 1993.

Legislative implications

- 48 The release of the attached discussion document would not have any direct legislative implications. However, final policy decisions following consultation may approve the making of regulations under section 360(1)(h) of the RMA. Regulations made under section 360(1)(h) exempt the discharge of certain contaminants from section 15 of the RMA, and may include conditions on the exemption.
- 49 Finalised regulations could be in place by October 2016.

Regulatory impact analysis

- 50 Regulatory impact analysis requirements apply to this paper. A Regulatory Impact Statement is attached as Appendix 3, including other policy options that were considered in the development of my proposal.
- 51 The Ministry for the Environment's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry for the Environment. They consider that the RIS meets the quality assessment criteria.
- 52 The RIS identifies a range of options and includes a level of analysis commensurate to the size and complexity of the issue. While aspects of the document could more clearly describe the issue, the analysis is sufficient to inform initial Government decisions on the proposals in this paper. We expect that any final policy decisions following consultation would be supported by further analysis of the impacts of the options, including views from a range of stakeholders.

Publicity

- 53 As noted at paragraph 39, I will prepare a communications plan to manage publicity associated with the release of the consultation document.
- 54 I also intend to proactively release this Cabinet paper and the associated EGI minute alongside the consultation document. This material would be published online at the start of public consultation.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 note that requirements on the use of 1080, brodifacoum and rotenone imposed by regional councils under section 15 of the Resource Management Act 1991 (RMA) duplicate the more comprehensive controls under the Hazardous Substances and New Organisms Act 1996 (HSNO Act), the Fisheries Act 1996 and the Conservation Act 1987;
- 2 note that the Minister for the Environment proposes to remove this duplication through regulations under section 360(1)(h) the RMA;
- 3 note that the proposed regulations would exempt certain uses of 1080, brodifacoum, rotenone from section 15 of the RMA, subject to conditions;
- 4 note that the regulations would also apply any other vertebrate toxins that are approved in future through a full assessment under sections 29 or 63 the HSNO Act;
- 5 note that the expected benefits of the proposal are lowered costs and improved management for pest control operations, and support for Government actions to improve primary production and increase biodiversity under the Business Growth Agenda;

- 6 approve the release the attached consultation document for public consultation;
- 7 invite the Minister for the Environment to report the outcome of public consultation to the Economic Growth and Infrastructure Committee by June 2016.

Authorised for lodgement

Hon Dr Nick Smith

Minister for the Environment

Appendix 1.

Draft consultation document 'Streamlining the regulatory regime for pest control'

Appendix 2.

Summary of proposal including conditions

Proposal: to simplify the regulatory controls on vertebrate toxic agents (VTAs) by removing current controls under the Resource Management Act 1991 (RMA) for certain VTAs, while retaining all other existing regulatory controls.

This would be achieved through regulations under s360(1)(h) of the RMA exempting the requirement for a resource consent or rules in regional plans (under section 15 of the RMA) for discharge of:

- any vertebrate toxic agent that has been through a full assessment under section 63 or 29 of the Hazardous Substances and New Organisms Act 1996 (HSNO);
- any vertebrate toxic agent that has been through a rapid assessment under section 28A, provided a full assessment under section 63 or 29 of HSNO Act has been completed for the active ingredient in the formulation;
- brodifacoum use compliant with the conditions of registration placed on the relevant brodifacoum based products (Pestoff Rodent Bait 20R; AVCM registration no V009014) registered under the Agricultural Compounds and Veterinary Medicines Act 1997 (ACVM).

Table 1. Possible conditions on the exemption

Condition	Rationale
Occupier permission for the land where the aerial discharge is occurring	This ensures aerial operations do not occur without people's knowledge or consent on land they occupy.
Information to be provided to councils on: <ul style="list-style-type: none">• the location of the planned operation (GPS data),• timing of the operation• the chemical being used.	This provides information to councils they have requested in the past in resource consents. This also provides councils with the ability to see where operations are occurring within their regions, and if necessary undertake monitoring and compliance actions.
Compliance with HSNO controls.	Whether this condition is included or not, all operations must comply with HSNO, ACVM and any other regulatory requirements. The purpose of this condition in the regulation is to ensure councils have a legal mechanism to enter private property to monitor compliance, and potentially use RMA enforcement mechanisms if the regulation is breached.

Appendix 3.

Regulatory Impact Statement