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Tēnā koutou,

Te Tira Whakamātaki Submission on the Proposed Amendments to the Biosecurity Act

Te Tira Whakamātaki welcomes the opportunity to provide feedback on the proposed amendments to the Biosecurity Act (“the Proposal”). We are committed to protecting our natural heritage through Indigenous-led and Indigenous knowledge-based solutions. Our team includes mātauranga experts, Māori scientists, policymakers, and kaitiaki.

We have consolidated our feedback with insights from our research and communities. We recognise the global, national and local importance of the Biosecurity System especially in the face of unprecedented global movements and biodiversity decline, and we are making this submission because the Biosecurity System should not only respond to that but it should also be Tiriti-led and meaningfully recognise the role of whānau/hapū/lwi. Our submission does not seek to represent the views or experiences of all Māori but rather provides our feedback based on our whakapapa (ancestry) and expertise.

In our submission below we emphasise the need for a biosecurity framework that acknowledges and actively supports Māori tino rangatiratanga (self-determination) over natural resources and aligns with Waitangi Tribunal findings. Our submission aims to ensure the Biosecurity System is grounded in the principles of Te Tiriti o Waitangi, legal precedents, and the rights affirmed through Treaty settlements.

Key Feedback

1. Te Tiriti o Waitangi and Crown Obligations

The Biosecurity Act amendments must explicitly uphold the principles of Te Tiriti o Waitangi, which include:

- **Partnership:** Shared decision-making between the Crown and Māori in biosecurity policy and governance.

- **Active Protection:** Proactively safeguarding Māori taonga (treasures), including whenua (lands), ngāhere (forests), wai (waters), and biodiversity.
- **Equity:** Ensuring Māori communities have equitable access to resources, capacity-building, and funding to participate in biosecurity efforts.

The Waitangi Tribunal's Wai 262 report ("Ko Aotearoa Tēnei") highlights the importance of Māori participation in environmental management and the need for mātauranga Māori to inform decision-making. The amendments should enshrine these obligations, ensuring Māori have substantive roles in shaping biosecurity policies that impact their taonga and the Māori economy.

2. Knowledge and Mātauranga Māori

The inclusion of local knowledge, particularly mātauranga Māori, in surveillance and decision-making is commendable but must be operationalised effectively. This requires:

- **Co-Design Mechanisms:** Creating frameworks where Māori, through Iwi, hapū, and Māori businesses, co-develop policies and strategies with the Crown.
- **Resourcing Māori Knowledge Systems:** Providing adequate funding to support the collection, preservation, and application of mātauranga Māori in biosecurity practices.

As an example, Te Tira Whakamātaki has worked to ensure mātauranga Māori complements contemporary science in pest management responses including myrtle rust and kauri dieback, demonstrating the effectiveness of this approach.

3. Treaty Settlements and Customary Rights

The proposed amendments must not undermine Māori rights recognised in Treaty settlements. For example:

- **Customary Marine Title Areas:** Under the Marine and Coastal Area (Takutai Moana) Act 2011, Māori have legal rights over specific coastal areas. Biosecurity measures affecting these areas must respect these rights and involve hapū in decision-making processes.
- **Settled Taonga Rights:** Māori settlements often include provisions for co-governance of natural resources (e.g., Waikato River Authority, Te Urewera Board). The Act should align with these settlement frameworks to avoid legal inconsistencies.

4. Active Involvement in Governance

To reflect partnership and active protection, Māori should have governance roles in:

- **Biosecurity Coordination Committees:** Iwi/hapū representatives must be included in decision-making at the national and regional levels.
- **Funding Allocation:** Māori must be involved in funding decisions, creating space for them to establish funding streams specifically for Iwi and hapū to undertake pest management, respond to biosecurity threats, and build capacity within Māori communities.

As an example, the Ngāi Tahu partnership with the Department of Conservation for managing biodiversity in the Ngāi Tahu takiwa (region) demonstrates successful co-governance that could be replicated in biosecurity governance.

5. Legal Considerations

The proposed amendments must address the Crown's legal obligations to Māori. Drawing on relevant legal advice and Waitangi Tribunal decisions:

- The Tribunal's Wai 1040 report on Te Paparahi o Te Raki (Northland) emphasised the Crown's duty to ensure Māori retain authority over their taonga and environmental resources. For example, the Wai 262 findings reinforce the need for Crown policies to support Māori kaitiakitanga (guardianship) and avoid unilateral decisions that marginalise Māori interests.

The Crown's failure to incorporate these principles risks judicial review or claims under the Waitangi Tribunal for breaches of Te Tiriti.

6. Capacity Building and Funding

Amending the Act should involve:

- **Dedicated Māori Funding:** Allocating targeted funding to support Māori biosecurity initiatives and capacity building; a lack of resourcing has historically hindered Māori participation.
- **Training and Development:** Establishing programs to equip Māori communities with the technical skills for biosecurity management, enabling them to exercise tino rangatiratanga over their resources.

7. Equity in the Government Industry Agreement (GIA)

The GIA framework, while industry-focused, must accommodate Māori businesses and Iwi organisations, particularly those reliant on primary industries such as forestry, agriculture, and aquaculture. Proposals should:

- Enable Māori entities to participate in GIA negotiations directly, not via industry reps, and without financial barriers.
- Recognise Māori businesses as Treaty partners rather than standard industry stakeholders.

8. Environmental Justice and Community Engagement

The Crown must prioritise Māori communities disproportionately affected by biosecurity incursions. For example, kauri dieback impacts Māori cultural practices and connections to whenua. Amendments should include:

- **Community-Led Responses:** Enabling hapū to lead local biosecurity responses with Crown support.
- **Access to Data and Research:** Providing hapū, Iwi and Māori with transparent access to biosecurity data and research to inform their kaitiaki responsibilities.

Summary:

The proposed amendment should cover the following:

- **Genuine Partnership:** The amendments should move beyond consultation to establish co-governance models that reflect a true Treaty partnership. This includes Māori having decision-making authority in biosecurity governance structures.
- **Resourcing and Support:** To effectively incorporate mātauranga Māori, the Crown must invest in building the capacity of Māori communities and organisations. This involves funding for research, education, and the application of indigenous knowledge in biosecurity practices.
- **Legal Recognition of Rights:** The amendments must explicitly recognise and uphold Māori rights as affirmed in Treaty settlements and customary practices. This ensures that biosecurity measures do not infringe upon these rights but instead support Māori in their role as kaitiaki.
- **Holistic Approach:** Biosecurity strategies should integrate environmental, cultural, and social dimensions, reflecting the interconnectedness emphasised in te ao Māori (the Māori worldview). This holistic approach enhances the effectiveness and cultural appropriateness of biosecurity measures.

The proposed amendments to the Biosecurity Act represent an opportunity for the Crown to fulfil its Treaty obligations and establish a biosecurity framework that upholds Māori rights, incorporates mātauranga Māori, and supports kaitiakitanga. We urge the Ministry and Government to engage meaningfully with Māori stakeholders, reflect Te Tiriti or at the least Treaty principles in the Act, and ensure any amendments result in equitable and culturally appropriate biosecurity outcomes.

Please contact Melanie Mark-Shadbolt, [REDACTED], if you wish to discuss this submission.

Ngā mihi,

Melanie Mark-Shadbolt

Tumu Whakarae, Chief Executive Officer

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QUESTIONS:

System-Wide Issues

1. Overarching Purpose Clause:

We support the inclusion of an overarching purpose clause that explicitly references Te Tiriti o Waitangi, ensuring the Act aligns with Treaty obligations and incorporates cultural, environmental, and social values alongside economic considerations

2. Ministerial Involvement in Significant Decisions:

We advocate for a 'call-in' power vested in the Minister responsible for the Biosecurity Act, with mandatory consultation with Māori to uphold partnership principles and consider impacts on Māori communities and taonga species. An alternative we might consider would be mandatory consultation with the Minister for Māori Development and Minister for Treaty Negotiations, complemented by a Treaty Impact Assessment.

3. Incorporating Local Knowledge:

We strongly support amendments enabling the integration of local knowledge, including mātauranga Māori, in decision-making processes, ensuring culturally informed and effective biosecurity measures.

Local knowledge, particularly mātauranga Māori, is a critical component in making biosecurity decision-making, more effective. Mātauranga Māori encompasses generations of observation, experience, and practice in managing Aotearoa's unique ecosystems, making it highly relevant to biosecurity. Its inclusion:

- **Improves Detection and Surveillance:** Māori communities possess intimate knowledge of their local environments and can identify subtle changes in ecosystems that may indicate new biosecurity threats.
- **Enhances Cultural Relevance:** Solutions rooted in mātauranga Māori are more likely to resonate with Māori communities, fostering greater cooperation and participation in biosecurity initiatives.
- **Strengthens Ecosystem Understanding:** Mātauranga Māori often considers the interconnectedness of species and ecosystems, providing a holistic approach that complements Western scientific methods.
- **Enables Rapid Responses:** Leveraging local networks and knowledge systems allows for quicker and more targeted responses to emerging threats.
- **Builds Community Resilience:** By empowering communities to contribute their knowledge, decision-making becomes more inclusive and sustainable, strengthening local and national resilience to biosecurity risks.

Examples of mātauranga Māori in biosecurity decision-making include:

- **Rongoā Māori (traditional medicine):** Knowledge of native plants used in rongoā Māori includes an understanding of pest-resistant species and their roles in ecosystem balance. This knowledge could guide decisions about biosecurity interventions, such as reforestation with pest-resistant native plants. See the Kauri Dieback Rongoā Solution work.

- Taonga species as indicators of ecosystem health: Māori kaitiaki observe taonga species (e.g., tuna, kākahi, and pōhutukawa) as indicators of ecosystem health. For example: Māori communities detected early signs of kauri dieback disease through changes in soil and tree health long before scientific diagnostics confirmed its presence. These observations could complement contemporary biosecurity surveillance systems.
- Observing seasonal indicators (Maramataka – Māori Lunar Calendar): The maramataka incorporates environmental and seasonal cues to guide activities such as planting, harvesting, and pest control. This knowledge could inform biosecurity timing and management, particularly for invasive species that align with seasonal cycles.
- Traditional pest management: Historical Māori practices for managing pests, such as trapping and habitat manipulation, offer sustainable and culturally grounded methods. As an example, using harakeke and native plants as natural barriers to control pest movement.
- Naming and categorisation of species: Māori names and classifications of flora and fauna often reflect their ecological roles and relationships. This knowledge could help prioritise species for protection or identify invasive threats more accurately.
- Management of marine ecosystems: Local Māori knowledge of marine environments, such as customary rāhui, has been used to protect and regenerate marine species. For example, Ngāti Porou implemented a rāhui to address kina barrens caused by overfishing, improving marine ecosystem health. This approach could be applied to biosecurity responses in coastal and marine environments. Iwi and hapū are also actively involved in monitoring freshwater taonga like tuna, which provided valuable data on water quality and pest invasions, enhancing biosecurity decisions at the regional level.

4. Biometric Information:

We have no preference for either the proposal or the status quo, however should the proposal go ahead we recommend clear guidelines for the collection and use of biometric information, ensuring alignment with Māori data sovereignty principles and the protection of individual rights.

5. Power of Arrest for Obstruction:

We **strongly disagree** with giving powers of arrest to biosecurity inspectors. We advise caution against expanding powers of arrest without robust safeguards to prevent potential misuse. Despite MPI noting it would only use such powers as a last resort, the proposal focuses on MPI staff risks, forgetting that Māori are often at the receiving end of such misuse.

Despite the promise of discretion, we believe without adequate training and clear protocols around respecting Māori rights, in order to minimise adverse impacts on Māori and their communities, MPI would need Police level training in particularly with regards to the Bill of Rights and calming and de-escalation techniques.

Funding and Compensation

6. Cost Recovery and Levies:

We support equitable and scalable cost-sharing arrangements that consider the unique position of Māori as Treaty partners. That said we acknowledge that a blanket approach might be more efficient and manageable. We support the infringement fees proposed. However, as it relates to proposals 8 and 9, we note that MPI and councils must ensure Māori and Māori entities are not disproportionately targeted or burdened, but we believe there is some merit in considering a

pathway for councils to designate infringements for pest and pathway management plans and amending the offence levels.

7. Sentencing:

We advise caution before introducing sentencing guidance into the Biosecurity Act, noting that Māori are often disproportionately targeted, burdened or impacted by sentencing guides. We suggest that any sentencing guidance is co-developed with Māori legal and justice experts.

8. Compensation Framework:

We advocate for a compensation framework that acknowledges the disproportional cultural and economic losses Māori may incur due to a biosecurity incursion and encourage MPI to ensure fair and timely compensation for Māori whether they are GIA / NSB partners or not.

We also anticipate that should a model be adopted that places more costs on GIA partners, that GIA partners would expect more decision-making power. If this occurs, then we expect MPI to ensure their Treaty partners views are not further weakened because the GIA has more influence.

We support a level of fair and balanced cost recovery but note that if GIA partners or NSBs are expected to pay more, they should also be determining how responses are run and not expected to cover costs that may blow out due to MPI decisions. They should also be involved in planning for the response and funding should be set aside for pre-emptive research to ensure impacts are known and planned for in advance.

We support the removal of restrictions on the ability to vary compensation, and the codifying of a dispute resolution process, so long as it doesn't adversely affect Māori or negate Treaty Settlements or obligations.

Border and Imports

8. Import Health Standards (IHS):

We support the suspension of IHS when new biosecurity risks are identified, so long as it is coupled **with** processes that include consultation with Māori to assess potential impacts on taonga species and ecosystems and complies with all legal and ethical requirements – nationally and internationally.

9. Border Management Powers:

We support changes that increase the ability to protect our taiao (land or marine based) and recommend that any extension of border management powers includes provisions for cultural sensitivity and engagement with Māori, particularly in areas of significant cultural importance or areas covered by existing and future Treaty Settlements. This is particularly relevant in the marine space.

10. Limiting Pathways and Providing Information to Passengers:

It is our view that operational efficiencies cannot and should not be used to justify decisions that may increase risks to the health and viability of our taiao, taonga, and associated cultural practices. We would argue that such risks could be deemed a breach of Article 2 of Te Tiriti. However, we support the inclusion of appropriate mechanisms that increase the ability of MPI to limit, restrict or prohibit entry of specific foods where those foods pose a risk to our taonga.

Any third party acting on behalf of the Biosecurity System must be adequately trained in Māori rights and engagement and have clear protocols in place to demonstrate their compliance with Treaty Settlements, past and future, and their ability to minimise adverse impacts on Māori and their communities.

We do not support removing the general duty to provide biosecurity information to incoming passengers. Whilst this might reduce the administrative burden and compliance costs for carriers and MPI, without research to prove otherwise, we believe it will increase delays at customs and costs for the airport, MPI and Police at the border.

Readiness and Response

10. Government-Industry Agreement (GIA):

We encourage the modification of the GIA partnership so long as it ensures Māori representation, perspectives and interests are integrated into all readiness and response activities.

11. Liability Protection for GIA Partners:

We support liability protections that encourage participation in biosecurity activities, provided they do not absolve parties from accountability, especially concerning impacts on Māori communities.

12. Emergency Declarations:

We can only support streamlined emergency declaration processes where they include mechanisms for rapid consultation with Māori to address potential cultural and environmental impacts. History suggest rapid- and emergency-based powers are often used to harm Māori and their communities (e.g., anti-terrorism and police powers), and or prevent services reaching Māori communities (e.g., Covid regulations).

13. Biosecurity Practices:

We encourage the development of biosecurity practices that incorporate mātauranga Māori and empower Māori communities to actively participate in biosecurity efforts. We also note that the Crown may pass responsibility to develop risk management plans to businesses and industry, but the responsibility to protect Māori and their taonga (Article 2 of Te Tiriti) remains with the Crown / MPI.

Long-Term Management

14. Pest and Pathway Management Plans:

We support simplifying the process for creating pest and pathway management plans, as long as it provides for the facilitation of Māori-led initiatives and ensures plan reflect Māori values and priorities.

15. Management Agency Responsibilities:

We support enabling multiple entities, including Māori organisations, to share management agency responsibilities, fostering collaborative and culturally appropriate pest management strategies.

16. Small-Scale Management Programmes:

We support empowering regional councils and Māori entities to implement small-scale management programmes, addressing localised biosecurity threats effectively.

Legislative Interfaces

17. Alignment with Other Legislation:

We support any amendments to the Biosecurity Act that prioritise the protection of our environment over the rights of recreational or commercial hunters and fishers, including giving power to a chief technical officer, with the appropriate skills, to designate a sports fish a pest. This aligns with Article 2 of Te Tiriti which promises the protection of our taonga.

We do not support the Fish and Game Council having a say over the inclusion of a sports fish in a council regional pest management plan. The Fish and Game Councils are the successor of the New Zealand acclimatisation societies, the creators of many of our pest problems, and they advocate for the interests of anglers and hunters over the rights of Māori, counter to the promises made in Article 2 of Te Tiriti. In our view they are unable to make fair, reasonable and unbiased decisions.

We recommend ensuring the Biosecurity Act aligns with all relevant legislation including Treaty Settlements and Acts that recognise and protect Māori cultural associations with taonga species e.g. Marine Mammals Protection Act.

18. Surveillance Activities:

We support amendments facilitating appropriate and efficient surveillance activities, provided they respect Māori rights, do not breach the Bill of Rights or cause undue harm to persons, and as long as they include meaningful consultation with affected iwi, hapū and communities.

Likewise we support increasing the ability for councils to carry out pest management activities on private land, so long as such activities don't unfairly and disproportionately target Māori landowners. Provisions need to be made to ensure impact on the immediate community are considered.

General Feedback

19. Engagement with Māori:

We emphasise the necessity for ongoing, meaningful engagement with Māori throughout the development and implementation of biosecurity policies, ensuring adherence to Te Tiriti o Waitangi principles.

20. Capacity Building:

We would advocate for initiatives that build Māori capacity in biosecurity, including funding, training, and support for Māori-led research and management programmes.

21. Monitoring and Evaluation:

We recommend establishing monitoring and evaluation frameworks that assess the effectiveness of biosecurity measures to protect Māori interests and incorporate Māori perspectives into assessments.

22. Data Sovereignty:

We note the importance of respecting Māori data sovereignty in all biosecurity data collection, storage, and usage, ensuring Māori have control over their data.

23. Research and Development:

We encourage investment in research that integrates mātauranga Māori and science, fostering innovative and culturally appropriate biosecurity solutions.

24. Public Awareness:

We support public awareness campaigns that educate the public about biosecurity threats and the role of Māori as kaitiaki of Aotearoa's natural resources.

25. International Obligations:

We expect the Biosecurity System to ensure that New Zealand's international biosecurity obligations are met in ways that uphold Te Tiriti o Waitangi and protect Māori interests.

26. Climate Change Considerations:

We support the incorporation of climate change projections into biosecurity planning, recognising the potential for new threats to taonga species and Māori livelihoods.

27. Resource Allocation:

We advocate for equitable resource allocation to enable Māori participation.