

REQUIREMENTS FOR NATIONAL CONSULTATION WITH MĀORI UNDER THE HAZARDOUS SUBSTANCES & NEW ORGANISMS ACT 1996

Introduction

1. The policy set out below applies to applications made within the requirements of the Hazardous Substances and New Organisms Act 1996 for the import or manufacture of hazardous substances, and for the import, development, field test or release of new organisms (including genetically modified organisms).
2. Applications requiring national consultation are most likely to be considered by the Authority, though may in some cases be considered by the Chief Executive of ERMA New Zealand. The requirements outlined below apply regardless of the appointed decision maker.

When to Consult Māori and at what level

3. Consultation is a two-way process and is not taken to mean consensus or agreement. In terms of the HSNO Act the purpose of consultation is to provide information so that the Authority can make an informed judgement¹.
4. In determining whether applications are likely to raise issues or interests for Māori, the outcomes of importance to Māori described in the protocol *Incorporating Māori Perspectives in Part V Decision Making* (ER-PR-01-02 11/04) provide guidance.
5. Once it has been determined that there are potential significant effects to one or more of the outcomes of importance for Māori, consideration must be given to whether those effects are:
 - local or national;
 - mitigated to negligible levels by the requirements of the application type (e.g. containment); and/or
 - able to be mitigated to negligible levels by the imposition of controls (where appropriate).
6. The general principle applying is that if an application will only have local impacts, then it is sufficient to consult with those Māori who are directly affected or who are tangata whenua in the area. National consultation should be reserved for cases where there are likely to be national impacts of significance to Māori. There may be exceptions to this general principle, but they should be justified on a case by case basis.

National Consultation Requirements

7. The following guidelines are provided for the determination of applications requiring national consultation. Application types not listed do not require consultation, or require local consultation only.

¹ Protocol – *Incorporating Māori Perspectives in Part V Decision Making* ER-PR-01-2 11/04

8. In general the following types of **GMO new organism** applications will require national consultation with Māori.
- a) GMO release applications and conditional releases (generally excluding qualifying organisms, emergencies or special emergencies) which are of a widely dispersed nature, such as GM crops.
 - b) On a case by case basis, GMO applications of any other type (including limited scale conditional release, field trial, containment and rapid assessments) which raise issues of national interest to Māori for the first time (i.e. are precedent setting), or that are likely to present potentially significant risk to the biological and physical environment generally, and/or to the cultural relationship of Māori to the environment. For example this might include applications for field trial that involve genetic material from a native taonga species such as harakeke.
9. In general the following types of **new organism** (non-GMO) applications will require national consultation.
- a) All new organisms release applications (including rapid assessments) that involve organisms that are either broadly related² to, and/or have the potential to pose significant risk to native or valued flora and fauna (taonga koiora / taonga tuku iho).
 - b) Conditional releases which are intended for wide dispersal geographically (i.e. not confined to a single location) and meet the criteria set out in a) above.
 - c) On a case by case basis, new organism applications of any type (including field trial, containment and rapid assessments) which raise issues of national interest to Māori for the first time (i.e. are potentially precedent setting), or that are likely to present potentially significant risk to the biological and physical environment generally, and/or to the cultural relationship of Māori to the environment.
10. In general the following types of **hazardous substance** applications will require national consultation.
- a) Full release or rapid assessment applications³ which are indicated to present significant risk to:
 - Native flora or fauna;
 - Valued flora or fauna; and/or
 - Cultural practices and knowledge of Māori.

² 'Broadly related' refers to those species considered likely to be able to hybridise with native or valued species.

³ Similar substance rapid assessment applications for which the risk is associated with the specific substance and not to the reference substance will require national consultation. If the risk applies to the reference substance the application can be considered without consultation but will be automatically added to the CE priority list for reassessment.

- b) Full releases intended for widespread sale or use, that poses significant risk to the productivity and life sustaining quality and quantity of natural habitats, ecosystems and resources.
- c) Full releases intended for widespread sale or use, that poses significant risk to human health and well-being which is indicated to fall disproportionately on Māori.

Levels of National Consultation

- 11. The following levels of national consultation reflect the nature and level of information required by the decision maker to appropriately consider applications dependent on the nature and level of potential risk of significance to Māori. In addition, the establishment of these levels of consultation recognises that the development of effective relationships between iwi/Māori and applicant communities will be best achieved through a consultative process that encourages real engagement.
- 12. The need to balance obtaining thorough and useful information about cultural risks on applications and maintaining the costs of consultation at a 'reasonable' level, particularly for biologically low risk applications, is reflected in this proposed approach.
- 13. The levels are outlined below. Level I represents the baseline consultative requirement and is thus also included as part of level II, and level III.
 - I. Applicants will distribute written information and feedback forms⁴ to the Māori National Network and the national contacts list of iwi and Māori organisations (maintained by ERMA New Zealand) requesting feedback (written or oral) by a specified date (providing a minimum of 6 weeks). Follow up communication will be required with those consultees who do not respond by the specified date.
 - II. Applicants will distribute written information and feedback forms as specified at level I.

In addition and where feasible, the applicant will meet and consult with a Māori Reference Group (established and maintained by ERMA New Zealand). Use of this mechanism will be at the expense of the applicant. If it is not feasible to work with a Reference Group (e.g. there is insufficient interest from within the group) the default position is to go to option III.

- III. Distribution of written information and feedback form as specified at level I.

Invite, organise and resource meetings / discussions with iwi and Māori organisations nationwide. These meetings might be held at a national level, or (more realistically) on a regional basis encouraging a face to face approach.

⁴ Standard Feedback Form Template developed by ERMA New Zealand.

Applicants are encouraged to discuss the nature and extent of consultation at this level with ERMA New Zealand staff.

14. The levels of consultative requirement (as outlined above) can be negotiated with specific applicants depending on any case that the applicant may advocate. This negotiation would be conducted in consultation with Ngā Kaihautū (the Māori Advisory Group to ERMA New Zealand). There may also be instances of reduced risk, or general acceptance by iwi/Māori of the potential risk and these situations will be assessed on a case by case basis.
15. The following table provides a guideline of the levels of consultation required for different types of applications. Again these requirements can be negotiated with the applicant in consultation with Ngā Kaihautū. An indication is also provided of the predominant outcomes of importance to Māori (as described in the protocol *Incorporating Māori Perspectives in Part V Decision Making*) likely to be of concern should adverse effect eventuate.

Application Type	Predominant outcomes of importance to Māori likely to be affected	Level
GMO Applications		
GMO release applications involving genetic material from native or valued flora and fauna, or humans.	<ul style="list-style-type: none"> • Environmental • Cultural • Health & Wellbeing • Tiriti o Waitangi/Treaty of Waitangi 	III
All other GMO release applications (excluding qualifying organisms, emergencies or special emergencies).	<ul style="list-style-type: none"> • Cultural • Tiriti o Waitangi/Treaty of Waitangi 	II
On a case by case basis, applications of any type which raise issues of national interest for the first time or that are likely to present potentially significant risk to the biological and physical environment generally, and/or to the cultural relationship of Māori to the environment.	<ul style="list-style-type: none"> • Environmental • Cultural • Health & Wellbeing • Economic Development • Tiriti o Waitangi / Treaty of Waitangi 	I-III
New Organism Applications		
NO release applications (incl. rapid assessments) that involve organisms that are broadly related to, and/or have the potential to pose risk to native or valued flora and fauna.	<ul style="list-style-type: none"> • Environmental • Cultural • Tiriti o Waitangi / Treaty of Waitangi 	II-III
Conditional releases which are intended for wide dispersal geographically (i.e. not confined to a single location) and meet the criteria set out above).	<ul style="list-style-type: none"> • Environmental • Cultural 	I-II

On a case by case basis, applications of any type which raise issues of national interest to Māori for the first time or that are likely to present potentially significant risk to the biological and physical environment generally, and/or to the cultural relationship of Māori to the environment.	<ul style="list-style-type: none"> • Environmental • Cultural • Health & Wellbeing • Economic Development • Tiriti o Waitangi / Treaty of Waitangi 	I-III
Hazardous Substance Applications		
Full release or rapid assessment applications ⁵ which are indicated to present risk to: <ul style="list-style-type: none"> – Native flora or fauna; – Valued flora or fauna; and/or – Cultural practices and knowledge of Māori. 	<ul style="list-style-type: none"> • Environmental • Cultural • Tiriti o Waitangi / Treaty of Waitangi 	III
Full releases intended for widespread sale or use, that poses significant risk to the productivity and life sustaining quality and quantity of natural habitats, ecosystems and resources.	<ul style="list-style-type: none"> • Environmental • Cultural • Tiriti o Waitangi / Treaty of Waitangi 	I-II
Full releases intended for widespread sale or use, that poses significant risk to human health and well-being which is indicated to fall disproportionately on Māori.	<ul style="list-style-type: none"> • Cultural • Health & Wellbeing 	I-II

Determining the Level of Consultation

16. If the applicant or ERMA New Zealand wishes to vary from the types and levels of consultation indicated above, or where uncertainty exists:
- i. The level of consultation shall be in the first instance determined by the Manager, Māori in consultation with the Tumuaki (Chair) of Ngā Kaihautū, Chief Executive and Chair of the relevant Authority Standing Committee.
 - ii. If there is any disagreement the matter will be referred to the Authority for determination.

⁵ Similar substance rapid assessment applications for which the risk is associated with the specific substance and not to the reference substance will require national consultation. If the risk applies to the reference substance the application can be considered without consultation but will be automatically added to the CE priority list for reassessment.