

12 September 2014

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## **Review of Import Risk Analysis Process**

The Invasive Species Council makes these brief comments on the review of the import risk analysis process. I apologise for making these late in the process.

### **Deciding which import decisions are subject to IRAs**

There should be a systematic risk-based approach to determining priorities for import risk analyses that include environmental criteria. The process should be applied both to new import proposals for which risk management measures have not been established and existing imports for which risk management measures are proving inadequate, as evidenced, for example, by repeat interceptions and/or incursions.

**Priorities for IRAs:** There is a great disparity in the effort and resources dedicated to IRAs and non-regulated risk assessments and in the assessment process (as discussed below), so it is important that there be clear, well justified environmental, economic and social criteria for determining which imports or proposed imports are subject to IRAs. Decisions under current prioritisation processes lack transparency and do not appear to reflect the level of biosecurity risk. Some prioritisation decisions may be made due to political pressure from a trading nation or an importer or the political sensitivity of an agricultural industry that may be affected by an import rather than the level of biosecurity risk for Australia.

**IRAs for existing imports:** There is a lack of clarity about the potential application of IRAs to existing imports. There are no legislative restrictions but the IRA handbook specifies that an IRA will be undertaken when 'relevant risk management measures have not been established' and the Invasive Species Council was informed by a senior Department of Agriculture manager<sup>1</sup> that IRAs are conducted only for proposed imports not currently permitted. This was in response to our request that the department consider undertaking an IRA for timber imports due to frequent incursions of yellow crazy ants. However, IRAs have occasionally been conducted for

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<sup>1</sup> Pers. comm. 16 July 2014.

already approved imports, for example for horse imports on the advice of the independent inquiry into the outbreak of equine influenza in Australia and for aquarium fish with respect to gourami iridovirus and other viruses.

We do not believe there is any justification for restricting IRAs to new proposed imports. The process should be used in the best way to achieve Australia's ALOP. We strongly recommend there is a process for triggering import risk analyses of existing permitted imports when there is evidence that import conditions are not meeting Australia's ALOP, such as when there is a pattern of interceptions or incursions associated with the import of certain goods. Examples include timber imports (due to the aforementioned risks regarding yellow crazy ants), other imports that are associated with tramp ant incursions and imports that act as potential pathways for the entry of new strains of myrtle rust.

### ***Recommendations***

1. Define environmental, economic and social criteria for determining which import decisions will be subject to IRAs.
2. Develop a transparent process for triggering import risk analyses of existing permitted imports when there is evidence that import conditions are not meeting Australia's ALOP, such as when there is a pattern of repeated interceptions or incursions associated with the import of certain goods.
3. In any committee appointed to determine IRA priorities ensure there is environmental representation equivalent to that from the agricultural sector.
4. Prepare a publicly accessible three-year list of priority IRAs (subject to the addition of urgent matters where new high-priority risks are identified).

### **Application of the precautionary principle**

There is often considerable uncertainty about whether introduced species will become invasive and their likely impacts. Uncertainty, whether due to inconclusive or insufficient evidence, is particularly prevalent and high with respect to impacts in the natural environment because of the complexity of biological interactions, the diversity of ecosystems and the unpredictability of environmental changes over time, particularly under climate change.

The precautionary principle is fundamental to effective biosecurity, particularly for the natural environment. The first Guiding Principle for Article 8(h) of the Biodiversity Convention requires a precautionary approach to preventing invasive species (Box 4).<sup>2</sup> The precautionary principle is standard in environmental law and

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<sup>2</sup> Article 8(h) of the Biodiversity Convention requires the signatory countries to as far as possible and as appropriate: 'Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species'.

policy (although often poorly enacted): a weak version of the principle was endorsed in the 1992 Intergovernmental Agreement on the Environment and is in the EPBC Act.

The approach to uncertainty is a vexed and contentious issue within biosecurity – because of what is regarded by many commentators as a conflict between obligations under global trade law and those under the Biodiversity Convention. There are undoubtedly tensions between the two regimes – with the ideals of free trade promoting the global flow of goods except when there is evidence of harm and those of conservation emphasising the need for protection in the face of scientific uncertainty, in effect giving the environment the benefit of doubt – but some commentators consider that application of the precautionary principle is compatible with trade laws (and, as noted, the EPBC Act requires the application of precaution for decisions on live animal imports).<sup>3</sup> Where there is legal incompatibility between Australia’s obligations under the Biodiversity Convention and under trade laws, Australia should as an urgent priority seek to reform trade laws.

Many decisions within biosecurity are precautionary – for example, the approach of refusing entry to new organisms unless they pass a risk assessment, and elements of the risk assessment protocol for plants, such as requiring a certain threshold of information about risks before determining whether a particular import will be approved.

### ***Recommendation***

5. As required under the Biodiversity Convention, require application of the precautionary principle to import risk analyses (and other biosecurity risk assessments).

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<sup>3</sup> This issue is discussed in more detail in Invasive Species Council (2012). Riley (2012) argues that regulators should meet the objectives of both regimes and suggests one approach based on the concept of plausibility: ‘In the midst of competing views, regulators should take uncertainty into account in a wider context that incorporates the objectives of each regime. Instead of the problem of IAS [invasive alien species] being viewed as a trade *or* environmental problem, it should be viewed as a trade *and* environmental problem. Since WTO processes are based on reducing uncertainty, while the CBD Guiding Principles favour reducing the effects of uncertainty, taking a relational approach means that regulators need to concede that ‘solutions do not exclusively consist of eliminating or reducing uncertainty.’ ‘Yet, either way, regulators still need to rely on scientific evidence to determine when to implement measures and what type of measures to initiate. A suggested method lies in identifying patterns that indicate a causal link between stressors to biodiversity and resultant threats or harm to biodiversity – a concept expressed as a ‘plausible hypothesis’.

## **IRA process**

**Independence:** With the exception of the involvement of the eminent scientists group in some IRA decisions, the decision-maker for IRAs is the Secretary of Department of Agriculture, who has a conflict of interest in his or her dual roles to promote agriculture and agricultural trade and to implement biosecurity. We endorse the recommendation of the Beale review that 'Biosecurity Import Policy Determinations should be made by an expert and independent National Biosecurity Commission' within an independent biosecurity authority. An alternative arrangement to promote independence would be to establish a risk assessment authority to undertake risk assessments and import risk analyses. Failing this, the environment department should be given decision-making powers equivalent to those of the agricultural department in setting priorities for IRAs and reviewing environmentally relevant IRAs.

We would oppose any shift in the IRA process towards using a proponent-based risk analysis due to the inherent conflict of interest (this is a weakness of the EPBC Act evaluation of live imports).

### ***Recommendation***

6. Establish an independent body to conduct all risk assessments, including IRAs.

**Environmental expertise:** IRAs should be undertaken and reviewed by people with appropriate expertise, including environmental expertise (and independence as recommended above). If the role of the Eminent Scientists Group is maintained, the group's membership should be varied to ensure that it has expertise, including environmental expertise, appropriate to each IRA.

### ***Recommendations***

7. Ensure that all IRAs with environmental implications have relevant environmental experts involved in the assessment and review process.
8. Appoint environmental experts to the eminent scientists group relevant to each IRA.

**Appeals:** The rigour of IRAs would be improved by an appeals process that provided for merits review of IRA decisions for stakeholders, including environmental stakeholders. All IRA decisions should be open to review, to challenge the application of the science, the reasons for the decision, the type of evidence used, the way evidence was used and the conclusions drawn. We oppose the provisions in the Biosecurity Bill 2012 to give an exclusive appeal right to applicants.

***Recommendation***

9. Provide for merits review of IRAs with third party rights for environmental stakeholders.

**Possible tools:** The risk-return resource allocation project currently being conducted by the Department of Agriculture may be seen by some as a useful tool to improve decision-making on import risks.

While this project holds much promise, until the assumptions fed into the tool are subject to consultation, the environment department and community sector more closely involved in its development, and the poor consideration of the environment is addressed, we have little confidence that this tool will improve matters.

***Recommendation***

10. Ensure the risk-return resource allocation tool to assist IRA decision-making is more environmentally appropriate and transparent before it is used.

**Non-regulated risk assessments**

Although non-regulated risk assessments are not the focus of this review process, we would strongly recommend that similar principles be applied to them, including application of the precautionary principle, transparency, involvement of environmental experts, independent assessment and review and third party appeals.

***Recommendation***

11. Conduct a similar review for non-regulated risk assessments with the aim of improving their transparency and environmental rigour.

**Additional information**

The Invasive Species Council made a number of additional comments at the stakeholder consultation in Melbourne on 20 August 2014. We trust that these comments will also be included in the IRA review.

Yours sincerely



Andrew Cox  
CEO

## **References**

Invasive Species Council. 2012. *Exposure draft of the Biosecurity Bill 2012. A submission from Environment NGOs*. 24 October 2012. (Endorsed by 17 ENGOS).

Riley S. 2012. Heads I win, tails you lose: Uncertainty and the protection of biodiversity from invasive alien species. *Asia Pacific Journal of Environmental Law* 14 (1-2): 139-168.