



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Adventure Activities Consultation Document	Date to be published	29/10/2021

List of documents that have been proactively released

Date	Title	Author
1 July 2021	<i>2021-4207 Adventure activities consultation document and Cabinet paper</i>	<i>MBIE</i>
1 July 2021	<i>Draft Regulatory Impact Statement: Consultation on proposals to strengthen the adventure activities regulatory regime</i>	<i>MBIE</i>

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Note also a final version of the draft Regulatory Impact Statement attached to this briefing has not been developed, as the consultation document acts as an interim regulatory impact analysis.



BRIEFING

Adventure activities consultation document and Cabinet paper

Date:	1 July 2021	Priority:	High
Security classification:	Sensitive	Tracking number:	2021-4207

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister of Workplace Relations and Safety	<p>Agree to lodge the Cabinet paper and consultation document on 29 July, 2021</p> <p>Agree to extend the start date for the first principles review from 2023 to 2026</p> <p>Agree to forward this advice to the Minister of Tourism and the Minister of Conservation</p>	7 July 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Lisa Collins	Manager, Health and Safety Policy		<div style="background-color: #cccccc; padding: 2px;">Privacy</div> ✓

The following departments/agencies have been consulted
Civil Aviation Authority, Department of the Prime Minister and Cabinet, Department of Conservation, Department of Internal Affairs, GNS Science, Land Information New Zealand, Ministry for Culture and Heritage, Ministry of Education, Ministry of Transport, National Emergency Management Agency, Sport New Zealand, Tourism NZ, The Treasury, Waka Kotahi NZ Transport Agency, WorkSafe NZ

Minister's office to complete:

- | | |
|-----------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Adventure activities consultation document and Cabinet paper

Date:	1 July 2021	Priority:	High
Security classification:	Sensitive	Tracking number:	2021-4207

Purpose

To provide you with the consultation document outlining proposals for change to the Adventure Activities regime and a Cabinet paper seeking approval for its publication.

Executive summary

As part of Government's response to the 2019 Whakaari White Island eruption, MBIE conducted a targeted review into the adventure activities regulatory regime (the regime). Findings from this review were presented to you in November 2020 [briefing 2021-1155 refers] and released to the public in December 2020.

In response to the findings, you agreed to MBIE undertaking a second phase of work to develop detailed policy proposals to strengthen the regime and for public consultation to take place in 2021. The proposed scope of regime change was agreed by you in February [briefing 2021-1956 refers].

An expert reference group (ERG) was established to provide strategic direction and technical input into the development of change proposals to strengthen the regime.

The package of change proposals have been previously presented to you in the Health and Safety Weekly report on 13 May. You then discussed this package with MBIE officials on 17 May.

The ERG support that the package of proposals included in the consultation document be presented for public consultation.

This brief presents the package of proposals in the consultation document, draws out the implications of key proposals and presents ERG feedback on them. The Cabinet paper attached to this advice seeks approval to publish the adventure activities consultation document.

Officials recommend that the first-principles review start in 2026 rather than in 2023 as previously agreed. This extension will provide certainty to the sector, enable MBIE to understand the impact of any regulatory change that come from the consultation process, and draw on findings from the Whakaari White Island prosecutions and/or Coroners investigation

MBIE officials are scheduled to meet with you on 7 July to discuss the package of proposals and the consultation process.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that the agreed scope of the consultation document includes proposals for regime change for the management of natural hazards, role of the regulator and audit process
- b **Note** that an Expert Reference Group was involved in the development of proposals in the consultation document and supports public consultation on that document

Noted

Noted

c **Note** that MBIE officials are scheduled to meet with you on 7 July to discuss the package of proposals and the consultation process

Noted

d **Agree** that the package of regulatory and non-regulatory proposals included in the consultation document are presented to Cabinet

Agree / Discuss

e **Agree** to forward this advice and the attached Cabinet paper and consultation document to the Minister of Tourism

Agree / Disagree

f **Agree** to forward this advice and the attached Cabinet paper and consultation document to the Minister of Conservation

Agree / Disagree

g **Note** that Crown Law will review the consultation document and MBIE officials will discuss this with you on 7 July

Noted

h **Agree** to lodge the attached Cabinet paper on 29 July 2021, for consideration at Cabinet Economic Development Committee on 4 August 2021

Agree / Disagree

i **Agree** that subject to Cabinet approval on the 9 August the consultation document will be published on 16 August 2021

Agree / Disagree

j **Agree** that the start date for the first principles review of adventure activities regime be extended from 2023 to 2026 to provide the sector with greater certainty and allow prosecution rulings to inform the work

Agree / Disagree

Privacy

Lisa Collins
Manager, Health and Safety Policy
Workplace Relations and Safety, MBIE

30/06/2021

Hon Michael Wood
Minister of Workplace Relations and Safety

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Background

The 2019 Whakaari event triggered a targeted review of the adventure activities regulatory regime

1. As part of Government's response to the 2019 Whakaari White Island eruption, MBIE conducted a targeted review into the adventure activities regulatory regime (the regime). Findings from this review were presented to you in November 2020 [briefing 2021-1155 refers] and released to the public in December 2020.
2. You received from the Ministry of Business, Innovation and Employment (MBIE) the findings from the targeted review of the adventure activities regulatory regime in a draft report [briefing 2021-155 refers] on 26 November.
3. You subsequently indicated your preference to release the findings from the review, and at the same time signal your intention to undertake a second stage of policy work to implement changes to the regime through a consultation process in 2021.
4. You informed your Ministerial colleagues at Cabinet on Monday 14 December of your intention to release the findings from the review and that you intended to return to Cabinet in 2021 with a draft consultation document with proposed changes to the regime seeking approval to publish.
5. The proposed scope of change was agreed by you in February [briefing 2021-1956 refers]. The scope of policy changes is limited to:
 - Clarifying and strengthening requirements for how operators manage natural hazard risks
 - Examining WorkSafe's regulatory leadership role
 - Improving public transparency of risks involved in adventure activities
 - Reviewing the audit process including audit standards and/or guidance materials
 - Understanding funding implications of any regulatory change
6. An expert reference group (ERG) was established to provide strategic direction and technical input into the development of policy proposals. The ERG was convened between March and June 2021 and was made up of key stakeholders and relevant experts¹. WorkSafe and MBIE collaborated closely on the development of policy proposals presented to the ERG for discussion.

The Cabinet paper, the consultation document and MBIE's regulatory impact statement are attached to this advice

7. The adventure activities consultation document (Adventure Activities – keeping it safe) is attached at **Annex One**.
8. The Cabinet paper attached at **Annex Two** seeks agreement to publish the consultation document.
9. The regulatory impact statement supporting the development of the proposals outlined in the adventure activities consultation document is attached at **Annex Three**.

¹ ERG members include representatives from: Tourism Industry Aotearoa, Recreation Aotearoa, NZ Māori Tourism, Department of Conservation, GNS Science, JAS-ANZ, Victoria University of Wellington, MBIE and WorkSafe. The members either represented industry groups or were experts in management of natural hazards, regulatory design, risk management and tourism.

10. Inter-agency feedback on the proposals presented in the consultation document is attached at **Annex Four**.

The consultation document presents a package of proposals for change

11. The expected outcome from this package is reduced fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic natural hazard events occurring in the sector over time.
12. The package of regulatory and non-regulatory change proposals to the regime includes the following key features:

Proposals to support a strengthened role for WorkSafe
<ul style="list-style-type: none"> • Require operators to register directly with WorkSafe. • Increase the information operators are required to provide WorkSafe when registering. • Require operators to report key indicator information to WorkSafe on an annual basis. • Create a list of “notifiable incidents” specific to the adventure activities sector. • Expand WorkSafe’s powers to decline to register/suspend/cancel registrations.
Risk classification system to improve the management of natural hazards
<ul style="list-style-type: none"> • Require government to develop a risk classification system, including operational framework and criteria that draws on industry expertise and scientific advice about natural hazards. • Risk classification criteria would group operators and activities into low, medium and high risk categories based on their risk assessment. • Introduce a specific requirement for operators to include a risk assessment in their safety management plan, where operators would assess risk. • The risk classification system would set audit requirements that reflect these different categories of risk including variations in length between on-site audits. Activities that are high risk would have more frequent on-site audits.
Specific requirements on landowners and operators to improve the management of natural hazards
<p>Requirements on operators</p> <ul style="list-style-type: none"> • Specific requirement for operators to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities. • Specific requirements for operators to have processes in place to consider when risks may be unacceptable and call activities off. <p>Requirements on landowners (two options available)</p> <ul style="list-style-type: none"> • Require landowners to provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about).

<p>OR</p> <ul style="list-style-type: none"> Require landowners to assess and manage the risks of natural hazards on their land when granting permission for adventure activity operators to operate on their land.
<p>Improved risk disclosures for participants</p>
<ul style="list-style-type: none"> Require additional prescription on the level of risk disclosure to participants in regulations or the Safety Audit Standard, this could link to an operators risk assessment as part of the risk classification system.
<p>Non regulatory changes to support improvements to the regime</p>
<ul style="list-style-type: none"> Changes to the safety audit standard to improve safety standards e.g. specify qualification requirements for particular staff. Changes to the audit process e.g. tighten safety checks on operators. Introduce an online log of notifiable events the adventure activities sector can access. Publish specific WorkSafe data for the adventure activities sector, including injury and fatality rates and enforcement activity undertaken by WorkSafe. Updating guidance materials to fill identified gaps around the management of natural hazards - <i>agreed in response to the targeted review and funded through Budget 2021.</i>

The ERG support that the full range of proposals included in the document should be presented for public consultation

- The Chair of the ERG noted that while there was not unanimous support from members of the Group for all of the regulatory change proposals included in the package, there was agreement that a full range of proposals should be presented to enable the sector and the wider public to consider which ones are most beneficial.
- ERG members representing industry groups noted that while their submissions would likely oppose some of the proposals, they would be supporting public consultation by ensuring the consultation document is circulated to their members for comment.

The case for change presented in the consultation document

WorkSafe's natural hazard fatality data has been supplemented with additional research to estimate the historical rate of harm in the adventure activities sector

- The *Health and Safety at Work (Adventure Activities) Regulations* were implemented in 2014.² This means information about adventure activities as a legally defined and regulated sector is limited to a relatively small timeframe. While there is a range of historic fatality data available, it can be difficult to apply the definition of "adventure activities" regulated under current regulations to this data.
- The natural hazard data and analysis included in the consultation document instead represents MBIE's best approximation of adventure activities fatalities based on our understanding of the available data. To make this approximation, MBIE cross-referenced WorkSafe fatality data with a range of other sources to draw our conclusions for the purpose of discussion. MBIE worked with Department of Conservation (DOC) and GNS Science to do

² With the exception of the accreditation scheme for auditing bodies, which was introduced in late 2015.

this and the approach is consistent to the one that was used for the 2010 review³ supporting the development of the Regulations.

The ERG member views on natural hazard fatality data and MBIE's response:

17. JAS-ANZ, WorkSafe and Recreation Aotearoa consider that a narrower definition, limited to deaths that occur as part of registered adventure activities operations should be used. This would significantly reduce the reported number of fatalities in the sector. They consider this narrower definition will be supported by the sector through the consultation process.
18. MBIE consider that a historical view of the sector is important in order to understand the rate of harm over time and whether natural hazard events are a strong contributing factor. The current regulatory definition of adventure activities is imprecise and requires judgement to apply. The definitional scope of adventure activities has been identified as an area of concern [briefing 2021-1155 refers] and will be considered as part of any first principles review.

The package of regulatory change proposals presents two different approaches for managing natural hazards

19. The options in the consultation document and regulatory impact statement are presented as a package of regulatory change proposals to enable the public to provide feedback on the individual components. MBIE's supporting analysis indicates that the package of regulatory change proposals can work together to achieve safety outcomes. The consultation document presents this option.
20. However, within the package there are two viable regulatory approaches available to achieve improved safety outcomes, which taken individually will have lower compliance costs for operators and the government. Both approaches require regulatory change to support WorkSafe's strengthened leadership role. However, the two approaches present different ways to manage natural hazards. The first uses a risk classification system and the second imposes duties on operators and landowners.
21. The expected outcome from this package of proposals is reduced fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic natural hazard events occurring in the sector over time.
22. Consultation on this package will provide further insights into which of the proposals is most likely to improve safety outcomes while at the same time supporting the sector to thrive.

Proposals to improve the management of natural hazards

The risk classification system proposal is a strategic tool that can be used to identify high-risk activities but requires WorkSafe to take a different approach to managing risk

23. Introducing a risk classification system ensures both natural hazards and activity-based technical risks are considered by WorkSafe, operators and safety auditors. The system would enable WorkSafe to identify and target their resources towards high-risk activities. It would also act as a regulator-led check and balance on the existing safety audit process.
24. The risk classification system would be supported by regulatory change, with the introduction of an additional tertiary instrument. The tertiary instrument would outline the risk classification criteria and approach and could be used to identify 'bright lines' around acceptable levels of risk. The existing safety audit standard, the certification scheme and guidance would be updated to reflect the new process.

³ Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New Zealand.

25. The risk classification system shifts some aspects of risk management from the operator to the government by defining risk levels. The risk classification system proposal would give safety auditors and operators' clarity around government's expectations around risk, enabling operators to more easily determine when activities are high-risk. It may be that the government takes a more conservative approach to risk because it bears more costs that operators for accidents.
26. This proposal recognises that the risk profile of the adventure activities sector can be more volatile and complex than traditional workplaces due to the identified intersection with natural hazards. It can also be difficult to expect an adventure activity operator to make decisions around risk when the viability of their business may be at stake. By comparison, government is better resourced, has a system level perspective and access to government-wide scientific advice putting it in a better position to understand the risks associated with natural hazards.
27. This proposal could be seen as setting a precedent for how WorkSafe administers other regulatory regimes. This risk can be reduced by emphasising the distinguishing characteristics of the adventure activities sector. Within the Health and Safety at Work legislative framework it is common practice that regulations to set industry-specific requirements depending on the nature of the industry.
28. Officials consider that any associated costs with the risk classification system will be marginal for operators. However, this proposal is likely to require additional government funding to develop and for WorkSafe to administer. Using scientific advice as an input into the process is likely to incur on-going costs for government.
29. MBIE and WorkSafe, along with other relevant government agencies (such as GNS Science, DOC and NEMA) will continue to work together on this proposal through the next phase of work. This will include understanding how the proposal could be implemented in practice, the cost implications associated with it, and ensuring it aligns with other regulatory approaches for managing natural hazards.

The ERG views on the risk classification proposal and MBIE's response:

30. The regulatory design expert, GNS Science and DOC consider it is unrealistic to expect an operator to undertake a thorough cost/benefit analysis of natural hazards in every situation. Regulatory best practice suggests when the environment is highly uncertain as well as high risk then the decision about undertaking/banning activities should be made by the government. This could be done through prescriptive mandatory standards or a risk classification system.
31. Members from industry groups and the risk management expert consider a risk classification system to be complex and unwieldy for operators to manage. It would be difficult to convey risk levels to participants and cuts across the existing accreditation process where passing the safety audit is an operator's public 'safety badge'. The risk management expert and WorkSafe are concerned that a risk classification system could be gamed by operators by presenting activities as lower risk.
32. MBIE recognise that for a risk classification system to work it needs to be relatively simple to implement and administer. Any system that is too complex risks losing the support of the sector, which would diminish its value as a strategic safety management tool. MBIE considers that it is possible to design a simple and easy to use risk classification system and note this approach has been used in other regulatory regimes⁴ with reasonable success. MBIE consider that scientific advice will be a critical input to any natural hazard

⁴ Ministry of Health (certification of aged care providers), BRANZ (earthquake risk zones) and Maritime NZ (maritime transport operator certificate)

risk classification system, we will work with other government agencies to understand how scientific advice can be best applied.

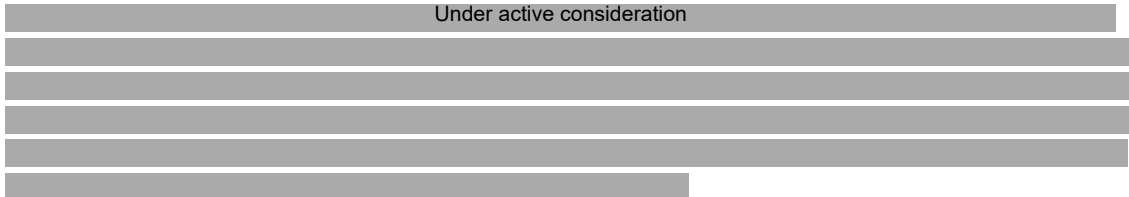
Proposals to introduce requirements on operators and landowners to manage natural hazards offers a more traditional method but it could be more costly and may reduce access to land

33. Introducing requirements for landowners to inform operators about natural hazards on their land acknowledges that multiple parties are involved in the management of natural hazards, and that operators are not always in the best position to identify and manage natural hazards. The requirement on landowners will provide a clarification to the general duty in the HSW Act for PCBU's to consult, co-operate with, and coordinate activities with all other PCBUs who have a duty in relation to the same matter. Requirements on landowners will specify what's expected for landowners to discharge their duty under the Act, and assist the operator to make well-informed decisions around natural hazards.
34. Requirements for landowners to manage access to their land recognises that one of the most effective risk mitigation measures for natural hazards is controlling the number of visitors exposed.
35. Under this approach WorkSafe will be able to monitor the compliance of operator and landowner requirements but will be removed from the actual decision making process around acceptable risk levels. This approach is more in-line with WorkSafe's current role and is less likely to require additional regulator funding.
36. A preliminary estimate, which will be tested through consultation, suggests the cost of operator safety audits will increase by between 5-15 per cent (or around \$500 to \$1500 every three years), dependent on the size and nature of the operation through these changes. There will also be an increase in costs for landowners. It is likely that some of these additional costs on landowners will be passed on to operators.
37. Including specific requirements on landowners has potential to reduce access to the outdoors, as landowners may choose to not grant access to land as a way to avoid any associated costs or responsibilities. This may reduce New Zealander's access to the outdoors more generally. Experience from the introduction of the Health and Safety at Work (HSW) Act suggests that when WorkSafe provides landowners with clarity around their expectations the impact on access to land is minimal.
38. We expect the DOC to carry the greatest proportion of any related costs as the majority (around 60 per cent) of adventure activities take place on public conservation land. Territorial local authorities (TLAs), Land Information New Zealand, and private landowners are also likely to be impacted.
39. DOC consider that the landowner requirement to assess and manage the risk of natural hazards is a significant departure from their current functions. DOC consider it unlikely that they would be able to cost recover all of the associated costs involved with this new function. Additional government funding for DOC to undertake this responsibility may be required.
40. MBIE and DOC will continue to work together to understand the implications of introducing landowner duties on DOC's operations. MBIE will work with LINZ, Waka Kotahi NZ Transport Agency and TLAs through the consultation process to understand the cost implications for their operations.

The ERG member views on landowner duties and MBIE's response:

41. DOC noted that public conservation land is not a controlled environment and DOC legislation does not allow for the exclusion of the public unless there is 'imminent danger' to them.

42. Industry groups noted that the requirements on landowners could lead to operators being refused access to land, making it difficult for some operators to continue offering their activities. They also noted operators already get information from landowners and they consider the system to be working as intended.

43.  Under active consideration

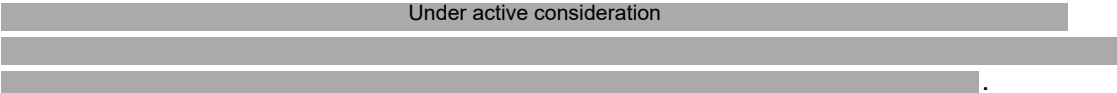
The package of proposals draws on the concept of acceptable levels of risk

44. Adventure activities are inherently risky, this is recognised by their regulatory definition. In developing proposals for consultation, MBIE has considered how to support adventure activities to proceed with some level of risk, while ensuring these risks remain at acceptable levels.

45. MBIE and WorkSafe, along with other relevant government agencies (such as GNS Science, DOC and NEMA) will work together to understand how to apply acceptable levels of risk to proposals included in the consultation document through the next phase of work.

There is an opportunity to draw on work across government to understand how to manage natural hazard risks to acceptable levels

46. Government agencies work together closely to minimise the risk and impact of natural hazards for New Zealanders.

- The National Security Group within the Department of the Prime Minister and Cabinet supports the assessment and strategic governance of nationally significant hazards and threats through a number of tools to help to identify potential gaps and opportunities in risk management.
- NEMA is responsible for the National Warning System, the New Zealand Volcanic Advisory Panel, the wider emergency management system and has an established relationship with local and regional forums for emergency management.
-  Under active consideration

47. We intend to draw on this broader work across government when developing our policy proposals to improve the management of natural hazards and understand acceptable levels of risk in the adventure activities sector.

Extending the timing for the first principles review

Any changes to the regime from the targeted review will be implemented in 2022. Extending the start of the first principles review from 2023 to 2026 will provide certainty to the sector

48. You previously agreed to a first-principles review of the regime starting in 2023 [briefing 2021-1155 refers]. This review will include, but is not limited to, the consideration of the regime's commercial viability, definitional scope and the use of third-party certification. The proposals presented in the consultation document do not address these system-level issues.

49. Officials consider that any changes recommended by the consultation process will likely be implemented by 2022. This would give operators one year before MBIE begins the first-

principles review. Consultation with industry groups suggests that the shifting regulatory landscape is likely to lead to uncertainty in the sector. In addition, the Whakaari White Island prosecution is likely to take 2-5 years to complete, meaning the legal implications from any court rulings may not be taken into account.

50. To address this, officials recommend that the first-principles review instead begin in 2026. This extension will provide certainty to the sector, enable MBIE to understand the impact of any regulatory change that come from the consultation process, and draw on findings from the Whakaari White Island prosecutions and/or Coroners investigation.

Consultation and communication to support public discussion

Public discussion on consultation document will take place between August and October 2021

51. The Cabinet paper seeks agreement to consult on changes to the adventure activities regime between August and October 2021. Key tourism, recreation and other stakeholders will be invited to take part in the process.
52. Consultation with stakeholders will take various forms, including emails and Facebook advertising inviting all stakeholders to take part in the consultation, face-to-face interviews and workshops with key stakeholders.
53. The qualitative data gathered through MBIEs face-to-face interviews and workshops will be used to shape our approach to the submissions analysis. Survey submission forms and other written forms of submission sent to MBIE will be used to develop final policy advice.

Impact of consultation on WorkSafe's Whakaari White Island prosecution

54. MBIE will support the Minister's Office with the public announcement of the consultation to raise awareness of the adventure activities consultation, and encourage people to provide feedback on the proposed changes.
55. Releasing the adventure activities consultation document could be seen to cut across the WorkSafe prosecutions into the Whakaari White Island event.
56. The consultation document highlights areas in the regime for strengthening, including the role of WorkSafe and introduces concepts around acceptable levels of risk and proposals for duties on landowners and operators. Legally privileged information

[Redacted]

[Redacted]

[Redacted]

A formal inquiry into the Whakaari White Island event is still an option available to the Government

59. Previous advice (briefing 2048 19-20 refers) considered that initiating a formal inquiry into the event at the same time as the investigations would risk cutting across them. The media continues to be interested in the possibility of a formal inquiry.

60. MBIE officials consider at this stage the programme of work⁵ to address health and safety issues in relation to the Whakaari White Island event should be sufficient to answer the health and safety questions raised as part of any formal inquiry.
61. It remains open to Cabinet to commission a formal inquiry in light of any new information arising from the health and safety programme of work, other investigations or any policy review suggesting there are systemic failures of institutions or regulatory approach.

Next steps

62. We recommend you provide feedback to officials on the adventure activities consultation document and Cabinet paper by 5 July 2021 or as soon thereafter as possible, with Ministerial consultation taking place afterwards.
63. We recommend that the Cabinet paper be signed and lodged by 29 July 2021, for consideration at Cabinet Economic Development Committee on 4 August 2021.
64. Subject to Cabinet agreement, the expected publication date of the adventure activities consultation document is 16 August 2021, with public consultation taking place between August and October 2021.
65. Following consultation, we will report to you on submissions and our final recommendations.

Annexures

Annex One: Adventure activities consultation document (*Adventure Activities – Keeping it Safe*)

Annex Two: Cabinet paper

Annex Three: Regulatory impact statement

Annex Four: Interagency feedback on the proposals presented in the consultation document

⁵ WorkSafe prosecutions into the Whakaari White Island eruption, the independent review of WorkSafe in relation to Whakaari White Island, the targeted review of the adventure activities regime and subsequent change proposals included in the adventure activities consultation document

Coversheet: Consultation on proposals to strengthen the adventure activities regulatory regime

Advising agencies	<i>Ministry of Business, Innovation and Employment</i>
Decision sought	<i>Release of a public consultation document on proposals to strengthen the adventure activities regulatory regime</i>
Proposing Ministers	<i>Minister for Workplace Relations and Safety</i>

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

This regulatory impact statement outlines a package of regulatory change proposals to the existing *Health and Safety at Work (Adventure Activities) Regulations 2016* (the Regulations) for public consultation. The consultation process will allow us to consider if any adjustment to the package is required, including the removal or modification of any proposals.

A key information gap in this regulatory impact statement is data that would enable us to monetise the marginal costs and benefits involved. We expect the public consultation process will provide some information to enable this analysis to be undertaken.

At this stage, a number of problems have been identified with the adventure activities regulatory regime:

- There appears to be need to improve how natural hazards are being managed in the current adventure activities regulatory regime. The vast majority of adventure activity operations in New Zealand intersect with natural hazards,¹ many of which present a risk of catastrophic harm.² Historical fatality data suggests that the proportion of fatalities related to natural hazard events is significant. While some hazards are managed well, different operators have various levels of understanding about natural hazards, and how well these hazards are being managed also varies. There is also a question around the complexity of natural hazards and whether operators are best placed to identify and manage this risk on all occasions.
- Not all adventure activities, or natural hazards, carry the same level of risk. Both the degree and type of risk faced by participants can vary greatly. This is partly due to the nature of the sector with its prevalence of natural hazards, but also due to technical risks involved in some of the activities. The adventure activities system currently does not provide an effective and easily accessible way to measure these

¹ 311 of 312 registered adventure activity operators manage natural hazard risks in their operations. These risks include: extreme weather events, water surge risk, flood risk (surface or enclosed space), rockfall risk, landslide risk, snow or icefall avalanche risk, risks from rapids, collapse risk, risk of volcanic eruption, and geothermal risk.

² That is, a single event involving the hazard could cause more than five fatalities.

risk variations, making it difficult to target regulatory responses to higher risk activities.

- Prior to the Whakaari eruption, WorkSafe took a limited approach towards regulating adventure activities in comparison to some other sectors. WorkSafe provided general guidance about the rules and good practices through its website, and investigated serious incidents in the sector, but undertook limited proactive activity to identify problems before accidents occurred. This amplified existing weaknesses in the regime around natural hazards. WorkSafe has instigated a program of work to improve their regulatory leadership role. Regulatory change to further support WorkSafe's strengthened leadership role will continue to improve safety outcomes in the adventure activities sector.
- The issues with managing risks associated with natural hazards, and the lack of regulatory oversight may undermine public confidence that natural hazard events are being adequately managed in adventure activity operations and that Government agencies are supporting this outcome. Currently, fatality rates are the only readily available data set to measure the performance of the regime – other published information, risk disclosure, and greater levels of monitoring may be desirable to increase public confidence and continued participation in adventure activities.

To address these gaps MBIE propose a package of regulatory changes. Consultation on this package will provide further insights into the scope and scale of these identified problems and which of the proposals are most likely to improve the outcomes we're seeking to achieve.

Summary of Preferred Option or Conclusion (if no preferred option)

How will the agency's preferred approach work to bring about the desired change? Why is this the preferred option? Why is it feasible? Is the preferred approach likely to be reflected in the Cabinet paper?

Summarise in one or two sentences

Public consultation on proposals is required to develop a firm conclusion.

The consultation document presents a package of regulatory and non-regulatory proposals to enable the public to provide feedback on the individual components. MBIE's supporting analysis indicates that the package of proposals can work together to achieve safety outcomes.

However, within the package there are two viable regulatory options available to achieve improved safety outcomes, which taken individually will have lower compliance costs for operators and the government. Both approaches require regulatory change to support WorkSafe's strengthened leadership role. However, the two options present different ways to manage natural hazards. The first uses a risk classification system and the second imposes duties on operators and landowners.

A more detailed cost-benefit analysis, developed in response to the consultation feedback, will allow us to test individual components that sit within the package for efficacy and impact and against project objectives. This analysis will enable us to reconsider the viability of the whole package, and the viability of the two options that sit within it, or whether an alternative combination would work best to address the problem identified.

The consultation document presents the following regulatory change proposals:

Proposals to support a strengthened role for WorkSafe
<ul style="list-style-type: none"> • Require operators to register directly with WorkSafe. • Increase the information operators are required to provide WorkSafe when registering. • Require operators to report key indicator information to WorkSafe on an annual basis. • Create a list of “notifiable incidents” specific to the adventure activities sector. • Expand WorkSafe’s powers to decline to register/suspend/cancel registrations.
Risk classification system to improve the management of natural hazards
<ul style="list-style-type: none"> • Require government to develop a risk classification system, including operational framework and criteria that draws on industry expertise and scientific advice about natural hazards. • Risk classification criteria would group operators and activities into low, medium and high risk categories based on their risk assessment. • Introduce a specific requirement for operators to include a risk assessment in their safety management plan, where operators would assess risk. • The risk classification system would set audit requirements that reflect these different categories of risk including variations in length between on-site audits. Activities that are high risk would have more frequent on-site audits.
Specific requirements on landowners and operators to improve the management of natural hazards
<p>Requirements on operators</p> <ul style="list-style-type: none"> • Specific requirement for operators to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities. • Specific requirements for operators to have processes in place to consider when risks may be unacceptable and call activities off. <p>Requirements on landowners (two options available)</p> <ul style="list-style-type: none"> • Require landowners to provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about). <p>OR</p> <ul style="list-style-type: none"> • Require landowners to assess and manage the risks of natural hazards on their land when granting permission for adventure activity operators to operate on their land.
Improved risk disclosures for participants

- Require additional prescription on the level of risk disclosure to participants in regulations or the Safety Audit Standard, this could link to an operators risk assessment as part of the risk classification system.

Project objectives

The project objectives for the targeted review of the adventure activities regime are:

- Raising safety standards in the adventure activity sector.
- Avoiding a chilling effect on the adventure activity sector.
- Supporting public access to the outdoors/recreation activities.

Currently, we consider safety standards in the sector, in particular to the management of natural hazards, can be improved. Commercial incentives on some operators may have led to a propensity to service market demand at the cost of safety standards around natural hazards, this has been exacerbated further through limited regulatory oversight.

The package of regulatory proposals will raise safety standards by incentivising necessary behaviour change for operators and landowners and provide more tools at the regulator level. Improving public confidence through full disclosure of risk will enable the public to make informed choices about their participation in adventure activities.

We consider that there is moderate risk that if the package is implemented in full it might lead to a chilling effect on the sector and may reduce participation and access to the outdoors. On the other hand, increased safety standards, post-Whakaari, may increase public confidence in the sector with people choosing to continue to participate in Adventure Activities. We will test this through the consultation process.

All New Zealand businesses are required to meet general health and safety duties under the HSW Act. We consider that the regulatory change proposals included in this package are feasible and relatively low-cost to implement on the basis that the Regulations are an established regulatory regime. Any additional costs on operators and landowners should be marginal costs on top of the costs of complying with their existing general duties. Consultation will help identify the nature and extent of some of these marginal costs and current levels of compliance with general duties.

It is likely that marginal cost increases borne by the operator will be passed onto adventure activity participants. The impact of increased costs on the purchasing behaviour of participants is unknown and will be explored during consultation. Some participants may be willing to pay a higher price for safer adventure activities. Alternatively, full disclosure of risk may lead to some participants choosing not to do the activity or choosing to take part in lower risk activities. Operators are likely to consider consumer behaviour as part of their market response to any regulatory changes.

There will be increased costs on the Regulator as a result of their strengthened role in the regime. WorkSafe received additional funding through budget decisions in Budget 2021 to support changes to the regime in relation to natural hazards. Any additional costs on top of this could be funded from WorkSafe's baselines or may require additional Crown or Health and Safety at Work Levy funding. MBIE periodically reviews the Health and Safety at Work

Levy funding rate. The cost-benefit analysis from the adventure activities work will be used as an input into any future review.

The expected outcome from this package is reduced fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic harm events related to natural hazards occurring in the sector over time. We consider there will be resultant economic benefits from improved safety in the adventure activities sector through:

- productivity gains from a reduction in fatalities
- reduced draw on New Zealand's health and ACC systems
- increased or continued international tourism spending once New Zealand's borders reopen
- minimisation of negative reputational impacts on the tourism industry.

At this stage, we do not have sufficient data to quantify the expected benefits, but expect that public consultation will provide further information on some of these aspects to enable more analysis to be undertaken.

The Cabinet paper is seeking approval to release a consultation document for public consultation.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main expected beneficiaries are participants undertaking adventure activities and workers guiding these participants. The nature of the expected benefit is increased levels of safety in relation to natural hazards while participants and workers undertake adventure activities leading to a reduced number of fatalities and serious injuries occurring in the sector and less catastrophic harm events occurring over time. Given the large number of people³ who participate in adventure activities the marginal benefits that come from increased safety levels may be significant.

Secondary beneficiaries include registered adventure activity operators and the New Zealand public. Expected benefits include: the New Zealand public enjoying the economic benefits that flow from international visitor spending, minimisation of negative reputational impacts on the tourism industry, and reduced draw on the New Zealand health and ACC systems.

We are currently unable to quantify the expected level of marginal benefits, but expect the public consultation to provide information to support further analysis of some of these benefits.

Where do the costs fall?

Registered adventure activity operators are likely to face increased safety auditing costs as well as increased administrative costs associated with identifying and managing a broader set of natural hazards, if they are not already doing this as part of their operations. They will face additional costs associated with providing WorkSafe information on key indicators.

³ In 2011, 36 per cent of international tourists (900,000) took part in at least one adventure tourism activity while in New Zealand.

We expect these costs will not add much to the existing costs of meeting their duties under the HSW Act and current Adventure Activities Regulations.

On average, the safety audit cost for operators is estimated to be around \$10,000.00 over a three year period.⁴ Operators are also charged an annual registration fee of \$100. A preliminary estimate indicates the safety audit cost will increase by a range of 5 per cent to 15 per cent dependent on the size and nature of the operation. There may be additional costs on operators to pay for any technical expertise associated with natural hazards. This preliminary estimate will be tested through consultation.

Recreation operators may be disproportionately impacted by cost increases compared to their commercial tourism counterparts. This is due to their not-for-profit or charitable business structures which often have tighter operating margins. The result of increased costs on operators may be that some registered operators are no longer able to offer registered adventure activities, this could mean fewer New Zealanders accessing the outdoors or fewer tourist offerings for international visitors. Historic behaviour in the sector suggests that an alternative response could be smaller operators consolidating their offerings with other registered parties, this could lead to market efficiencies without the adverse effect on access to the outdoors or tourism offerings.

Landowners⁵ will face increased marginal costs to identify and manage risks associated with natural hazards. We expect the Department of Conservation to carry the greatest proportion of these costs as the majority (around 60 per cent) of adventure activities take place on public conservation land. Land Information New Zealand, territorial local authorities and private landowners are also likely to be impacted. Although we understand there is only a small number of private landowners offering adventure activity operators access to their land (estimated at around 5 per cent). Any cost for landowners associated with the management of natural hazard risks is also likely to be passed on to operators. DOC suggest that it is unlikely they could recover all of the costs associated with managing natural hazards from adventure activities operators. Some landowners may choose to limit access to their land as a result of the change. DOC is not in a position to limit access to land. DOC legislation does not allow for the exclusion of the public unless there is 'imminent danger' to them.

Adventure activity participants will face increased charges to participate in adventure activities if operators pass on the higher operating costs associated with changes to the regime. It may be that some participants are willing to pay a higher price for safer adventure activities. Alternatively, full disclosure of risk may lead to some participants choosing not to do the activity or choosing to take part in lower risk activities. Different market segments are likely to have different price sensitivity, for example an international tourist is likely to have low price sensitivity compared with low-decile New Zealand schools whose students participate in adventure activities through school camps. Operators are

⁴ Audit costs vary depending on the number of activities being audited in a three year period. Some operators offer multiple activities. The audit costs is inclusive of travel expenses. These costs will be tested through the consultation process.

⁵ Most landowners or land managers who allow adventure activity operators to access their land will be PCBUs under the HSW Act. These parties are already required to ensure, so far as reasonably practicable, the access they are allowing to operators and the places activities occur do not create health and safety risks.

likely to consider consumer behaviour as part of their market response to any regulatory changes. This would include adjustments to market demand through a decrease in their operating costs (e.g. reduced operating hours and reduced labour costs), it may be that some operators who are unable to respond quickly by adjusting their offerings will face reduced market viability.

WorkSafe will have increased operating costs associated with a more active regulatory leadership role in the regime. The scale of these additional costs will be estimated as part of any policy advice that is developed once the consultation process is complete.

WorkSafe received \$2.22m funding through Budget 2021 to implement policy changes to the Regulations to improve the management of natural hazards. Funded activities include:

- operational policy work by WorkSafe to support any regulatory changes to the regime
- development of natural hazard guidance materials led by WorkSafe to support operators and landowners to manage natural hazards
- natural hazard expertise to support WorkSafe's organisational understanding of natural hazards
- education and engagement activities by WorkSafe to support operator awareness and compliance with any regulatory change.

Any additional costs on top of this could be funded from WorkSafe's baselines or may require additional Crown or Health and Safety at Work Levy funding.

We anticipate obtaining additional information from impacted parties during public consultation to further verify these costs.

What are the likely risks and unintended impacts? how significant are they and how will they be minimised or mitigated?

There is a low risk that over time WorkSafe will refocus on other sectors and regulatory regimes over adventure activities, meaning that the longer term benefits of the regulatory changes are reduced. We consider this to be a low risk because of current programme of operational work being undertaken by WorkSafe to strengthen their regulatory leadership role in the regime. The risk of this happening over the longer term will be addressed through a research and evaluation plan to monitor the performance of the regime, and measures to improve public confidence in WorkSafe's continued role in the regime. Conversely, there is a risk that over time WorkSafe over-prioritises this sector compared to sectors without reporting requirements.

There is a moderate risk that proposals for regulatory change are poorly received by the adventure activity sector. This risk will be mitigated by working closely with the industry bodies as part of public consultation and through the implementation phase to hear any concerns or issues, and refine the proposals if necessary to make sure that they are workable and proportionate.

There is a low risk that increasing regulatory requirements on adventure activity operators may have unintended impacts on the adventure activity market, either through changes to the structure of the market or by incentivising perverse behaviours. This risk will be mitigated by working closely with the industry bodies and others as part of public consultation to understand the impact any changes will have on the market.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

We have moderate to high confidence in the evidence base describing the problems being addressed through these regulatory proposals. This is based on the range of work undertaken so far including the targeted review, WorkSafe internal health check, sector-based surveys and feedback from the Expert Reference Group (ERG) on the policy options proposed and analysis of natural hazard fatality data. Our level of confidence is linked to the strong convergence of findings across all supporting pieces of work. The purpose of consultation is to seek further information to strengthen our analysis.

We have low-to-moderate confidence in the evidence base outlining the marginal costs and benefits that would come from implementing these proposals. We will improve our confidence in the quantification of some of the marginal costs and benefits following public consultation.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Quality Assurance Assessment:

Reviewer Comments and Recommendations:

Impact Statement: Strengthening the adventure activities regulatory regime

Section 1: General information

1.1 Purpose

The Ministry of Business, Innovation and Employment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly stated. This analysis and advice has been produced for the purpose of informing and consulting stakeholders on a government discussion document.

1.2 Key Limitations or Constraints on Analysis

Out of scope

Out of scope of this analysis are the definition of adventure activities, a fundamental redesign of the regime (e.g. removing third party authorisation, or removing the regulations and relying on general duties in the HSW Act), and the regime's intersection with transport regimes (implemented by CAA and Maritime NZ).

Problem definition

There is insufficient focus on managing natural hazards in the current regulatory regime, even though the vast majority of adventure activity operations in New Zealand intersect with natural hazards,⁶ many of which present a risk of catastrophic harm. Historical fatality data suggests that the proportion of fatalities related to natural hazard events is significant. While some hazards are managed well, there are variations in operators' understandings of natural hazards and in how well these are managed. There is also a question around the complexity of natural hazards and whether operators are best placed to identify and manage this risk on all occasions.

Not all adventure activities, or natural hazards, carry the same level of risk. Both the degree and type of risk faced by participants can vary greatly. This is partly due to the nature of the sector with the prevalence of natural hazards, but also due to technical risks involved in some of the activities. The adventure activities system currently does not provide an effective and easily accessible way to measure these risk variations.

Prior to the Whakaari eruption, WorkSafe had limited involvement in the adventure activities regime and were taking little proactive action to ensure safety standards in the sector remained high. WorkSafe has instigated a program of work to address these issues. Regulatory change to strengthen WorkSafe's regulatory leadership role will further support safety outcomes.

Quality of data used for analysis

⁶ 311 of 312 operators registered at the time of the Targeted Review were found to manage natural hazard risks in their operations. These risks were: extreme weather events, water surge risk, flood risk (surface or enclosed space), rockfall risk, landslide risk, snow or icefall avalanche risk, risks from rapids, collapse risk, risk of volcanic eruption, and geothermal risk.

The quantitative and qualitative data used for the regulatory impact assessment has been collated from the following sources. A key information gap is data that would enable us to monetise the marginal costs and benefits involved. We expect the public consultation process will provide information to enable this analysis to be undertaken. The evidence has been drawn from:

- Estimating the size of the adventure tourism sector and numbers of international visitors involved using 2011 international visitor spending data. We would look to update this data during the consultation phase of work.
- Fatality data and catastrophic harm data drawn from:
 - The Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New Zealand 2009/10 Final Report, 9 June 2010, Department of Labour, NZ 2010
 - Confirmed adventure activities work-related fatalities notified to WorkSafe: 1 November 2014 to 31 December 2019
 - WorkSafe's register of work related catastrophic events
 - Coronial reports of deaths in the adventure activities sector
 - Media reports of deaths in the adventure activities sector
 - Media articles on New Zealand natural hazards
- Targeted Review of the Adventure Activities Regulatory Regime – undertaken by MBIE. The targeted review of the adventure activities regulatory regime was conducted between August and December 2020 and considered whether weaknesses exist in the regime where adventure activities take place in naturally hazardous environments. The review involved qualitative interviews with key stakeholders to understand the nature of the regime and quantitative analysis to understand the number of activities that intersect with natural hazards and their inherent risk of harm. The review examined both regulatory settings and the roles and responsibilities of organisations involved in the implementation of the regime. The review found a number of weaknesses in the regime which informed the scope of regulatory change options developed. Phase 1 of the review can be found here: [Targeted review of the adventure activities regulatory regime \(mbie.govt.nz\)](https://www.mbie.govt.nz/).
- WorkSafe's Adventure Activities Regulations Internal Health Check. Between June and September 2020, WorkSafe undertook a cross-organisational evaluation of its operational performance as adventure activities Registrar and regulator. The work identified substantive issues, opportunities and recommended actions to strengthen WorkSafe regulatory leadership in the regime. Findings from the internal health check can be found here: <https://www.worksafe.govt.nz/assets/dmsassets/WKS-17-AA-Health-check-background-information.pdf>
- Adventure Activity Sector Survey (April 2021) was undertaken by Tourism Industry Aotearoa and Recreation Aotearoa to canvass the views of the sector around the management of natural hazards and the role of the regulator in the Adventure Activities Regulatory Regime. Forty-seven surveys were completed by members of the sector, including adventure activity operators, guides, technical experts and auditors. The survey continues to be open to respondents. We will continue to draw on this as a source of sector information through the consultation process.
- Risk comparisons for Department of Conservation (DOC) Visitors and Workers, a report produced by Tony Taig on behalf of GNS, July 2020. This study allowed DOC to assemble risk comparisons to develop guidance on the appropriate

response to natural hazard risk for visitors and staff working on New Zealand Public Conservation Land.

To support the development of policy proposals MBIE established an Expert Reference Group (ERG) made up of key stakeholders and relevant experts⁷. The ERG was established and convened between March and June 2021. The ERG gave input into the identified problems with the regime and assisted in developing policy proposals for inclusion in the discussion document. This was done through a series of three-hour workshops. MBIE and WorkSafe developed five issues papers to facilitate ERG discussion. The terms of reference for this group can be found here:

<https://www.mbie.govt.nz/dmsdocument/13868-expert-reference-group-to-support-policy-response-to-the-2019-whakaariwhite-island-tragedy-terms-of-reference-march-2021>.

Criteria to assess options

The criteria, which reflect the project objectives, are listed below:

- Improve the management of risks associated with natural hazards within the adventure activity sector
- New Zealanders' and international visitors' accessibility to adventure activities is maintained.
- Compliance and administration costs are proportionate to the level of risk involved for regulated parties and enforcement authorities

Limitation on consultation and testing

Public consultation is yet to occur. We expect the public consultation process to provide further data and enable us to further refine our proposals. Consultation analysis will support the development of a more informed regulatory impact assessment including a monetised cost benefit analysis.

1.3 Responsible Manager (signature and date):

Privacy

Lisa Collins

Health and Safety Policy

Workplace Relations and Safety

Labour, Science and Enterprise

Ministry of Business, Innovation and Employment

1 July 2021

⁷ ERG members include representatives from: Tourism Industry Aotearoa, Recreation Aotearoa, NZ Māori Tourism, Department of Conservation, GNS Science, JAS-ANZ, Victoria University of Wellington, MBIE and WorkSafe. The members either represented industry groups or were experts in management of natural hazards, regulatory design, risk management and tourism.

Section 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

The adventure activities sector

The adventure activities sector ranges from 300 to 330 operators offering more than 60 different types of adventure activities.⁸ Registered operators provide activities across New Zealand, with concentrations in popular tourist destinations like Rotorua, the Central Plateau and Queenstown Lakes District. Operators range in size from single person operations to large enterprises. Consultation with stakeholders suggests business acumen across the sector is mixed and profit margins are tight, with operators expressing high price sensitivity to increases in operating costs.

The sector is split roughly equally between commercial tourism operators offering adventure activities predominantly to the international tourist market and recreational operators offering activities to educational providers and other domestic recreational groups. This split is reflected in the two main industry bodies representing the sector (Tourism Industry Aotearoa (TIA) and Recreation Aotearoa). Around half of registered operators are members of either TIA or RA.

Recreation operators predominately offer adventure activities as part of 'school camps'. These operators are often faith-based or other charitable organisations for example, Salvation Army, YMCA or Hillary Outdoors Education Centres, with a corresponding not-for-profit or charitable business structure. These operators have been historically sensitive to increases in operating costs. With the impact of COVID-19, commercial tourism operators are also sensitive to any increase in cost but this pressure may alleviate once borders open.

Prior to the COVID-19 pandemic, international tourism has been an important export earner for New Zealand, contributing \$17.2 billion, or 20 per cent of export earnings in 2019. The industries accounting for the largest proportion of tourism jobs include accommodation, food and beverage, and rental and recreation services. In the year to June 2011, domestic and international tourists who took part in at least one adventure tourism activity spent \$4.1 billion on their New Zealand holiday. In the same year, 36 per cent (or 900,000) of international tourists took part in at least one adventure tourism activity while in New Zealand.

The impact of COVID-19 on the tourism sector has been significant. In New Zealand, the economic losses in tourism are expected to be deeper and the recovery slower than the overall economy, with firm closures and job losses. The government has responded to the challenges of COVID-19 with a focus on saving strategic tourism assets and building the sector back better, initially through stimulating domestic tourism demand, and over the longer term offering higher-value products and targeting higher-spend customer segments. There is potential for the international visitor market to recover quickly once borders reopen, as New Zealand's effective management of COVID-19 may contribute to the perception of New Zealand as a "safe" destination in the pandemic context. Visitors expect high-quality and safe adventure activities, and the adventure activities sector will support the wider tourism sector to rebuild. However, the tourism sector has noted difficulties in retaining skilled staff through COVID-19. This may impact the

⁸ Numbers of registered operators fluctuate as operations are created or disestablished.

adventure activities sector with the reliance on skilled and experienced guides to provide safe activities.

Participation in leisure and recreation activities for New Zealanders is an important contributor to overall wellbeing, as well as physical and mental health, social connection and cultural identity.⁹ Recreation adventure activity providers facilitate access to the outdoors, supporting New Zealanders to explore the natural environment and stay healthy, fit and connected.

As noted previously, 900,000 international tourists took part in adventure tourism activities in 2011. The number of visitors reduces once the narrower definition of adventure activities is taken into account. There is currently no data available to estimate the number of domestic tourists or students taking part in adventure activities. A broad estimate might assume the number of adventure activity participants per year ranges from 500,000 to 700,000.¹⁰ The consultation process will be used to refine this estimate.

2.2 What regulatory system(s) are already in place?

The Health and Safety at Work Act

New Zealand's *Health and Safety at Work Act 2015* (the HSW Act) provides a balanced framework to secure the health and safety of workers and workplaces. The core objective of the HSW Act is to ensure that workers and other persons are given the highest level of protection against harm to their health, safety and welfare from work risks as is reasonably practicable. The HSW Act is the primary legislative vehicle that sets general duties and coverage of work and workplaces. Health and Safety at Work Regulations expand on general duties and set risk and industry-specific requirements.

The current regulations

The *Health and Safety in Employment (Adventure Activities) Regulations 2011* were introduced to address widespread concern over the management of risk in the adventure tourism sector and to reduce perceived damage to New Zealand's reputation as an international visitor destination. The present version of the regulations, the *Health and Safety at Work (Adventure Activities) Regulations 2016* (the Regulations), were introduced to transfer the regime under the newly introduced HSW Act.

New Zealand is relatively unusual in comparison to most comparable countries in having specific regulations that require operators to register their adventure activities and requiring audits.¹¹

⁹ https://issuu.com/newzealandrecreationassociation/docs/insights_report_3_living_standards

¹⁰ This takes into account the definition of adventure activities. It assumes an equal split between tourism and recreation operators but with the assumption that recreation operators have smaller operations. The estimate takes into account the number of enrolled students who are more likely to attend school camp (e.g. year 7, 8, 9).

¹¹ The United Kingdom has a licencing system for adventure activities, but this generally only applies to operators providing activities to young people. The UK licencing system is also currently under review, and may be removed.

Australia has a voluntary standards system for adventure activities operators, with operators also liable under general contract, negligence and health and safety laws. Some Australian states also have laws about specific activities – for instance Queensland has legislation that provides specific duties for safety in recreational water activities, such as diving and snorkelling.

The need for regulation stems from the universal accident compensation scheme, which means that operators do not have the same liability for personal injuries to participants under contract and negligence laws as in many comparable countries. This more limited liability for personal injury is one of the factors that has contributed to the development of the adventure activities sector in New Zealand, but it also means accountability has to be promoted through regulation rather than relying on the potential for personal injury suits and the associated pressures from liability insurance providers.

What is an Adventure Activity?

The definition of “adventure activity” is laid out in regulation 4 of the Regulations. It is an activity—

- i) that is provided to a participant in return for payment; and*
- ii) that is land-based or water-based; and*
- iii) that involves the participant being guided, taught how, or assisted to participate in the activity; and*
- iv) the main purpose of which is the recreational or educational experience of the participant; and*
- v) that is designed to deliberately expose the participant to a serious risk to his or her health and safety that must be managed by the provider of the activity; and*
- vi) in which— failure of the provider’s management systems (such as failure of operational procedures or failure to provide reliable equipment) is likely to result in a serious risk to the participant’s health and safety; or the participant is deliberately exposed to dangerous terrain or dangerous waters.*

Adventure activities as a specific sector is not covered or regulated elsewhere in New Zealand legislation.

There was significant focus on what would qualify as an adventure activities throughout the policy development process. The initial definition was intended to encompass a broad set of adventure tourism activities based on risk profile but was narrowed to a smaller set of activities through the policy development process. The definition is also subject to a range of exceptions, such as activities provided by sports clubs and schools, and activities subject to other regulatory systems (such as maritime transport operations, adventure aviation activities and amusement devices).

Several key aspects of this definition are vague, such as what constitutes “dangerous terrain” and whether operations “deliberately expose” participants to serious risk. The current definition of “adventure activity” may also not cover all activities that pose a similar level of risk to those in the regime. The policy intent of the regime was to require all commercial adventure and outdoors sector activities that provided a significant risk of serious harm to participants to be registered. However, current interpretations of the definition generally exclude several activities that prima facie appear to pose significant risks analogous to those of activities that do require registration, such as horse trekking and alpine hunting.

The Targeted Review noted these definitional issues and recommended that the definitional scope is considered as part of any future review.

The current regulatory regime and requirements

Like all businesses, adventure activity operators are subject to the requirements of the HSW Act. The primary duty under the HSW Act is for all businesses to ensure, so far as is reasonably practicable, that their work does not put at risk the safety of their workers or other persons. This includes ensuring the equipment provided is safe and that workers have the necessary training to manage the risks of their operation.

Sector-specific requirements for adventure activities are provided through the Adventure Activities Regulations. These regulations require all adventure activity operators to pass an audit of their safety management systems at least every three years and register their operations with WorkSafe. The Adventure Activities Regulations make it an offence for operators to provide or offer to provide an adventure activity unless registered.

Operators must pass a safety audit in order to register as an Adventure Activity operator. Safety audits of adventure activity operators are conducted by independent auditing bodies. These audits are conducted against a specialised safety audit standard published by WorkSafe. The safety audit standard sets out the requirements for operators in their delivery of adventure activities and their overall safety management system. Auditors both conduct full audits of operators at least once every three years for registrations and monitor the performance of operators between audits to ensure they are continuing to meet the safety standards.¹²

For an auditing body to conduct adventure activity safety audits they must be recognised by WorkSafe. WorkSafe uses JAS-ANZ accreditation as the main means to decide whether an auditing body has the appropriate expertise and systems in place to be recognised as an adventure activity safety auditor. JAS-ANZ assesses and accredits auditing bodies against the New Zealand Adventure Activity Certification Scheme and ISO/IEC 17021-1:2015, which sets requirements for how auditing bodies perform auditing, certification and monitoring functions.

In addition to these health and safety requirements, transport legislation establishes safety requirements for the land, air and marine transport aspects of operations. Certain activities, such as adventure aviation and jet boating, are regulated under transport rules rather than the Adventure Activities Regulations. Some activities are regulated under both regimes e.g. diving and heliskiing.

TIA and Recreation Aotearoa support the adventure tourism and commercial outdoor recreation sector to manage their health and safety obligations through the management of the SupportAdventure.co.nz website. This website provides a range of resources (including good practice materials, adventure safety guidelines, safety management system templates, and examples) and is endorsed by WorkSafe.

The performance of the regime

In October 2016, WorkSafe briefed the then Minister for Workplace Relations and Safety and the then Minister of Tourism on the results of a survey of the Adventure Activities scheme's performance during the three year period to March 2016. The review found the

¹² Auditor monitoring of operators between audits takes a range of forms, depending on what the auditor thinks is appropriate to ensure the operator is continuing to meet the safety audit standard. Options include on-site audits, document reviews or declarations from the operator they are continuing to meet safety standards. Scheduled monitoring activities are generally conducted once a year. Unscheduled monitoring requirements for individual operators may also occur in addition.

regime had improved safety management in the adventure activities sector but there was room for further refinement to its implementation.

Given the relative newness of the Adventure Activities Regulations, a review was scheduled as part of MBIE's health and safety at work regulatory reform work programme. The Whaakari/White Island eruption on 9 December 2019 led to the review being brought forward (Phase 1 of the targeted review refers).

Instigation of work

This project was instigated in response to the 9 December 2019 Whakaari/White Island eruption. Forty-seven people were present on the island as part of guided adventure activity tours. The eruption left 22 people dead and 25 people with significant injuries. At the direction of the Minister for Workplace Relations and Safety, MBIE has led a programme of work to assess weaknesses and areas for improvement in the adventure activities regulatory regime through a targeted review.

Findings from the targeted review were presented to the Workplace Relations and Safety Minister towards the end of 2020.

Findings from phase 1:

- While still relatively new, the regulatory regime appears in many respects to be performing well and supporting policy objectives of increasing safety standards
- WorkSafe taking an increased regulatory leadership role will improve safety standards further
- The review made several recommendations that would strengthen aspects of the regime around natural hazard risk identification and management and audit processes
- Broader structural changes in the certification scheme have also been identified that could strengthen the regime and improve safety outcomes
- The review has also identified several system-level issues around the regime's commercial viability and definitional scope for future consideration.

Based on the findings, the Government announced that it plans to make improvements to the regime. Subsequent to this, the Minister of Workplace Relations and Safety agreed for any improvements to the regime to focus on:

- Clarifying and strengthening requirements for how operators manage natural hazard risks
- Examining WorkSafe's regulatory leadership role
- Public transparency and performance
- Reviewing audit standards and/or guidance materials
- Reviewing how the regime is funded.

MBIE has developed a package of regulatory change proposals to reflect this scope. These proposals are described in the discussion document and analysed in this regulatory impact assessment.

Interdependencies

There are a number of projects taking place across government in response to the Whakaari/White Island event that have interdependencies with this piece of work.

- **MBIE** commissioned independent review of WorkSafe's regulatory role in relation to activities taking place on Whakaari/White Island up until 9 December 2019.
- **WorkSafe's** investigation and subsequent prosecution into the Whakaari/White Island eruption on 9 December 2019.
- **WorkSafe's** internal health check to strengthen its regulatory leadership in the administration of the adventure activities sector.
- **DOC** work to develop a framework for managing visitor risk from natural hazards in public conservation land and online guidance around volcanic risk in Tongariro National Park.
- **MBIE** work to consider science's contribution to risk-based decision making in a regulatory context.
- The **Coroner's** investigation into the Whakaari/White Island eruption on 9 December 2019.
- **Department of Internal Affairs** will work collaboratively at a future date with other agencies and key stakeholders regarding future access to Whakaari/White Island.

2.3 What is the policy problem or opportunity?

Problem definition

There is insufficient focus on managing natural hazards in the current regulatory regime. Not all adventure activities carry the same level of risk. The adventure activities system currently does not provide an effective and easily accessed way to measure these risk variations. The lack of a strong regulator presence amplifies other weaknesses in the regime such as limited understanding and consistent practices regarding natural hazards.

In combination, these factors may contribute to a situation where:

- Catastrophic harm events related to natural hazards continue to occur in the sector on a periodic basis (currently these events occur at least every 10 years with each event having around 8 fatalities and 7 serious injuries).
- The proportion of fatalities and significant injuries related to natural hazard events continues to remain unaddressed (currently around half of the adventure activity fatalities result from failures to manage natural hazards).
- These fatalities and significant injuries continue to impose a cost on New Zealand's public health and ACC systems, with catastrophic harm events having a disproportionate impact (the Whakaari/White Island eruption lead to \$14 million in hospital costs).
- Catastrophic harm events and continued fatalities linked to natural hazards means that public confidence in the safety of the adventure activities sector reduces.
- International media coverage of catastrophic harm events leads to fewer international visitors participating in adventure activities. New Zealand's international brand is diminished.

Problems arise from the nature of activities and the environment where they happen

Natural hazards are physical, quick-onset natural events with a degree of localised impact that have the potential to cause fatalities. These include risks of extreme weather, water surges and flooding, rockfall, landslides, avalanches, and eruptions.

Natural hazard risk is determined by the probability of the natural hazard event occurring, the predictability and level of expertise required to forecast it, and the level of impact it will have.

While there is a range of historic fatality data available, it can be difficult to apply the definition of “adventure activities” regulated under current regulations to this data. The following data and analysis therefore represents a best approximation based on our understanding of the available data. When we use the term ‘adventure activities sector’ in the analysis it is intended to convey this approximation.

A significant part of the harm that occurs in adventure activities comes from natural hazards.

- There were 29 fatalities in adventure activities in the 2004-2009 period, 13-18 deaths resulted from failures to manage natural hazards, depending on the definition of natural hazard used.
- In the five year period between November 2014 (when the Adventure Activity Regulations took effect¹³) and November 2019 there were nine fatalities in adventure activities. Four of these fatalities resulted from natural hazard events.
- The total number of fatalities increases to thirty-two when the timeframe is extended to December 2019. This includes twenty-two fatalities from the 2019 Whakaari eruption and one fatality on the Routeburn Track. Twenty-six of the thirty-two fatalities resulted from natural hazard events.

Since Adventure Activities Regulations took effect in 2014 we have seen improvements in the way many risks are managed in the sector. However, around half of the harm that occurs continues to be from natural hazards.

Almost all registered adventure activities intersect with natural hazards. The targeted review found 311 of 312 operators registered in November 2020 manage natural hazards as part of their activities.

We have heard that in practice some operators do not pay appropriate attention to natural hazard risks. This is particularly the case where these are “background risks” from the environment activities occur in, rather than an active part of the activity. For instance, while a kayaking activity in Milford Sound may closely manage risks from weather and water surges, but may not pay enough attention to risks of rockfalls into the water where the activity takes place.

Natural hazards also present the main risk of catastrophic events (which result in more than five deaths) in the sector. Almost all natural hazards have some risk of causing catastrophic harm. While historical data is limited, there appears to be catastrophic (or near-catastrophic) events involving natural hazards happening at least every 10 years in the adventure activities sector. For each of these events there is an average of around 8 fatalities and 7 serious injuries.

¹³ With the exception of the accreditation scheme for auditing bodies, which was introduced in late 2015.

The targeted review suggested that operators' understanding of natural hazards is patchy and the regulatory regime needed to put greater emphasis on supporting the proper management of these risks. Increased communication of natural hazards to staff and customers and managerial responsibility for cancelling activities based on heightened risks from natural hazards were also highlighted as areas for improvement.

While it is not realistic to eliminate harm from natural hazards in adventure activities, we think we can improve the system to reduce the rates at which harm occurs.

Work to improve the management of natural hazards is also occurring in other areas of government. Under active consideration

Government agencies work together closely to minimise the risk and impact of natural hazards for New Zealanders. The National Security Group within DPMC supports the assessment and strategic governance of nationally significant hazards and threats through a number of tools to help to identify potential gaps and opportunities in risk management. The Group's National Risk Approach is used across government to help ensure New Zealand's nationally significant risks are managed effectively. We think we can spread this information and these good practices to the adventure activities sector more broadly to help continue lifting safety standards.

For more detailed data about natural hazard harm in the adventure activities sector, refer to **Annex One**.

The current approach to risk assessment may not be well suited to the adventure activities sector

Not all adventure activities carry the same level of risk. Both the degree and type of risk faced by participants can vary greatly depending on the nature of the activity and the environment in which it is operating.

The regulatory system currently does not provide an effective and easily accessible way to measure and communicate these differences in risk. All operations that meet the definition of an "adventure activity" are required to go through the same registration and auditing process.

This process also provides limited information to WorkSafe about whether operators or groups of operators are particularly high risk within the sector. The information operators are required to provide to WorkSafe for registration is basic details like the activities they offer and their location, which is of limited value in understanding the level of risk they face.

WorkSafe also receives information about deaths and serious injuries that occur in adventure activities. However, this information alone may not provide a fully accurate indication of risks in the sector. Many adventure activities carry underlying risks of catastrophic harm incidents. While such incidents may be rare, they are an important part of the sector's risk profile.

These difficulties in monitoring risk levels makes it difficult for WorkSafe to recognise issues in the sector and target its resources to where they can be used most effectively.

Linked to this, we have also heard some participants feel they are not always appropriately informed about the risks of the adventure activities they are taking part in either by third party ticket providers or operators.

There are a number of regulatory constraints hampering WorkSafe from taking a strong leadership role in the regime

For the adventure activities system to work well, it needs to be supported by a strong regulator. WorkSafe needs to monitor and administer the regime, ensure the accreditation scheme they are responsible for is working as intended, provide guidance and support to operators, and enforce requirements where necessary.

Prior to the Whakaari/White Island eruption, WorkSafe took a limited approach towards regulating adventure activities in comparison to some other sectors. WorkSafe provided general guidance about the rules and good practices through its website, and investigated serious incidents in the sector, but undertook limited proactive activity to identify problems before accidents occurred.

Guidance materials and instruments such as the safety audit standard were also not frequently updated. While industry groups such as Recreation Aotearoa and TIA had previously been funded and supported to produce guidance like activity safety guidelines, this funding was not continued beyond 2016.¹⁴

An internal evaluation of adventure activities operations conducted by WorkSafe following the Whakaari/White Island eruption similarly concluded that WorkSafe needed to recommit to its regulatory leadership role and strengthen how it administers the regime.¹⁵ WorkSafe has instigated a program of work to improve its regulatory leadership role.

This lack of a strong regulator presence amplifies other weaknesses in the regime such as limited understanding and consistent practices regarding natural hazards.

In part, this hands-off approach can be attributed to difficulties in assessing risks in the sector, as discussed above. However, some of the tools WorkSafe has to intervene in the sector can be difficult to apply. For instance, while WorkSafe has the power to suspend or cancel the registration of adventure activity operators, the Adventure Activity Regulations only allow them to do this in very limited situations – such as where the operator has provided false information, has failed to meet their audit certificate conditions, or has so seriously failed to provide activities safely they have endangered a person's life.

The diverse nature of the adventure activities sector also presents challenges to WorkSafe. The highly specialised nature of many adventure activities, the different types of risk faced in the course of each activity and the range of environments in which they

¹⁴ With the exception of funding to support the development of an activity safety guideline for rafting activities in 2019/20, following rafting moving from being an activity regulated under maritime rules to being regulated under the Adventure Activities Regulations.

¹⁵ This health check can be accessed at <https://www.worksafe.govt.nz/topic-and-industry/adventure-activities/documents-and-resources/>

operate make it difficult for the regulator to have the expertise to fully assess all operations.

If no further action is taken, we may expect that:

- The regime will continue to not explicitly address the risks that come from natural hazards. This could mean that some registered adventure activities continue to operate in high risk environments without adequate safety measures in place, which could lead to fatalities and continued occurrence of catastrophic harm events.
- The full range of risks that occur in the sector remain unconsidered weakening the efficacy of the regulator and leading to gaps in operator practice.
- The regulator continues to lack a full suite of information and enforcement tools to understand the health of the sector and act quickly when unsafe activities occur, to prevent harm, or to regulate effectively.

We expect that the public consultation process would enable us to further corroborate the marginal costs and benefits involved in any regulatory change.

Refer to **Annex 1** for data on fatalities and catastrophic harm events related to natural hazards in the adventure activities sectors.

2.4 What do stakeholders think about the problem?

Refer **Annex 2** for stakeholder views expressed as part of Phase 1 of the targeted review and in sector surveys.

An Expert Reference Group (ERG) was established to support the development of the regulatory change proposals included in the discussion document. The group was made up of key stakeholders and relevant experts.¹⁶ A series of issues papers were developed by MBIE with a full range of regulatory change proposals presented. The underlying problems and regulatory proposals for change were discussed in-depth by the group. Based on ERG feedback MBIE narrowed the number of proposals down to the package presented in the discussion document.

ERG views on the package of regulatory change proposals

The Chair of the ERG noted that there was not unanimous support from members of the Group for all of the regulatory change proposals included in the package, but there was agreement that a full range of proposals should be presented to enable the sector and the wider public to consider which ones are most beneficial.

ERG members representing industry groups noted they while their submissions would likely oppose some of the proposed regulatory changes, they would be supporting public consultation by ensuring the discussion document is circulated to their members for comment.

ERG views are summarised below.

¹⁶ ERG members include representatives from: Tourism Industry Aotearoa, Recreation Aotearoa, NZ Māori Tourism, Department of Conservation, GNS Science, JAS-ANZ, Victoria University of Wellington, MBIE and WorkSafe. The members either represented industry groups or were experts in management of natural hazards, regulatory design, risk management and tourism.

Natural hazards:

- Industry groups (and JAS-ANZ) considered that natural hazards are generally well managed by operators and extensive regulatory change isn't required. They noted some activities have detailed safety procedures in place to manage natural hazard risks e.g. river-based activities consider cubic flows before undertaking activities.
- Industry Groups consider that natural hazard risk is likely to be better managed when customers are in the care of an adventure activity provider compared to members of the public accessing these types of activities independently.
- DOC and GNS suggested that risks from natural hazards are real in the adventure activity sector and these risks need to be managed. DOC noted that while operators may be managing activity-based risks well they may not be aware of the full range of natural hazard risks their activities intersect with.
- DOC noted it is the role of the regulator to ensure that the sector's safety management systems adequately address natural hazard risks.
- The ERG consider that fatality data and catastrophic harm events do not reflect the true state of the sector and that injury data is also required.
- The ERG support the proposal to create a list of "notifiable incidents" specific to the adventure activities sector and consider this information should be made public to improve sector capability.
- The ERG reflected that it is difficult to attribute deaths wholly to natural hazard events when often a mixture of factors, including human error, leads to the death.

Acceptable levels of risk:

- The ERG noted operators are left to make decisions around risk but don't necessarily have the guidance/support to assist this decision making.
- The ERG noted the adventure activities regime leaves the majority of decision making to the operator, even when high-risk activities are involved.
- The regulatory design expert noted it is unrealistic to expect an operator to undertake a thorough cost/benefit analysis of every situation. Regulatory best practice suggests when the environment is highly uncertain as well as high risk then the decision about undertaking/banning activities should be made by the government. This could be done through prescriptive mandatory standards or a risk classification system.
- DOC and the regulatory design expert noted it is possible to design a risk classification system that takes into account activities with different levels of technical risk versus environmental risk. A range of criteria could be developed to ensure the system is suitably nuanced for the activities involved.
- DOC noted that for the system to work it is important to set the overall risk appetite for adventure activities with the corresponding risk tolerance levels.
- MBIE noted examples of risk classification systems can be found in Australian amusement devices regulations and maritime systems – there is precedent for risk classifications in regulatory systems.
- A range of views were expressed on the development of a risk classification system to convey risks to participants. DOC and the regulatory design expert noted current methods do not effectively convey risks involved – public believe if it's open, it's safe. Industry groups and the risk management expert noted it's

complicated for customers, operators might “game” it. Any solution should be simple to understand to allow customer to give informed consent.

- GNS and JAS ANZ noted that for a risk classification system to work it would need to be developed in a way that could convey dynamic risk.
- Industry groups noted a risk classification system is complex and unwieldy for operators to manage. It would be difficult to convey risk levels to participants and cuts across the existing accreditation process where passing the safety audit is an operator’s public ‘safety badge’.
- DOC noted they are considering the best way to communicate risk to the public for key sites on public conservation land, an option being considered is using a simple risk level system of lower risk, moderate risk, higher risk.

Landowner duties

- DOC noted that public conservation land is not a controlled environment and DOC legislation does not allow for the exclusion of the public unless there is ‘imminent danger’ to them.
- If the Regulations were to change and DOC needed to do more it would need to cost recover for these services from the sector.
- DOC noted as a PCBU they have a clear role in communicating and collaborating with other PCBUs on public conservation land to manage risk, but the onus should be operators to manage their client’s safety as per their safety management systems.
- Industry groups noted with additional duties on landowners that there is a risk operators will be refused access to land, making it difficult for some operators to offer their activities.
- Industry groups noted operators already get information from landowners and they consider the system to be working as intended.

Role of the regulator

- The regulatory design expert noted that third party authorisation regimes still require Regulator involvement. The Regulator needs to know the regime is working as intended and also needs to be able to act quickly when an issue arises. This goes to the need to understand the risk level involved and ensure the action/design is proportionate.
- ERG noted that currently, there are limited statistics on the performance of the scheme, and overall trends are not analysed. The regulatory design expert noted that good regulatory practice would expect trend analysis to be undertaken in order to understand the health of the sector and target enforcement activities.
- The TIA/RA survey of AA operators indicates that they don’t feel well supported by the Regulator.
- Some ERG members noted that there is a lack of appropriate feedback loops in the system to enable the Regulator to determine if the regime is functioning as intended, or identify the need to intervene.
- It was noted by the ERG that the Regulator, rather than industry bodies, is well placed to communicate with and provide guidance to the sector. Industry groups only represent parts of sector, while the Regulator has a direct line of

communication to all operators covered by the Regulations through the registrar function.

Sector capability building

- Industry groups noted that the Support Adventure website and Support Adventure newsletter are valued and trusted by operators, as they are both seen to be from and of the sector. WorkSafe engaging more directly with operators could be most effective through these channels.
- It was noted by industry groups that the feedback loops that go to the Regulator should also come back down to the operator so they have a greater awareness of issues in the system and how to respond to them.
- The ERG noted that the current safety standards are light touch which leaves many decisions over to the operator. It was noted by JAS-ANZ that audit standard is the key component to the regime and the current safety standard was developed eight years ago. The standard could be updated to reflect current best practice including minimum information to offer participants, along with some components of the certification scheme e.g. the use of declarations of conformity.

Our consultation approach to support public discussion of regulatory change proposals

Public consultation on the package of change proposals, will be both broad and targeted, ensuring both public and key stakeholder perspectives are captured and specific feedback is given.

Public consultation will be undertaken through uploading the discussion document to MBIE's website, alongside an electronic submission form. The launch of the discussion document to the general public via a press release and leveraging existing communications channels. To raise awareness of the launch MBIE and WorkSafe will use a range of channels including websites, social media, stakeholder alerts, newsletters, speech material and internal intranets. The media release will include a link to the discussion document on MBIE's website. An electronic submission form will be included on the same page to guide respondents in their submissions.

Targeted consultation will take various forms, including emails inviting key stakeholders to take part in the consultation, face-to-face interviews with key players and workshops with key segments. All groups will be encouraged to make a public submission to MBIE on the regulatory change proposals.

MBIE will also use Facebook advertising to ensure that members of the general public are aware of the consultation process. Facebook advertising will target New Zealand members who are more likely to participate in adventure activities. Facebook channels will also be used to target international members who have travelled to New Zealand and taken part in adventure activities.

A. The stakeholders we intend to target include those directly impacted by the Whakaari/White Island eruption:

- Victims of the eruption and their families
- Local iwi
- Environment Bay of Plenty
- Whakatāne Leaders Recovery Group

- Other relevant Whakatāne or Bay of Plenty stakeholders

B. Others more generally impacted by proposed changes to the regime, including:

- Registered adventure activity operators
- Guides and other employees of adventure activity operators
- Members of the public who participate in adventure activities
- Members of the public who have been impacted by deaths in the adventure activities sector
- Safety auditors who undertake audits on adventure activity operators
- JAS-ANZ, the accreditation body who oversees the safety audit process

C. Several organisations that represent particular communities of interest, including:

- Tourism Industry Aotearoa, as the peak body for tourism businesses
- Recreation Aotearoa, as the peak body for recreation providers
- New Zealand Maori Tourism, as the peak body for Maori tourism businesses
- Local Government New Zealand, the local government association of New Zealand representing the interests of city and regional councils

D. Key landowners, including:

- Department of Conservation
- Specific territorial local authorities including Queenstown Lakes District Council, Taupō District Council, Rotorua Lakes Council
- Land Information New Zealand
- Private landowners who give registered operators access to their land

E. And others indirectly impacted by proposed changes to the regime, including:

- The New Zealand Principals' Federation, spokesbody for schools who take part in adventure activities through school camps
- Insurance bodies e.g. Insurance Council of New Zealand who develop business and holiday insurance which may be affected by regulatory changes
- Natural hazard risk experts.

F. Government's tripartite partners will also be included:

- Business New Zealand
- Council of Trade Unions

The public consultation will enable us to get a clearer view of stakeholders' perspectives about the problem and its causes, and which of the regulatory change proposals are best to address it.

2.5 What are the objectives sought in relation to the identified problem?

Objectives

The system level objectives for Health and Safety at work are that workers and other persons are given the highest level of protection against harm to their health, safety and welfare from work risks as is reasonably practicable.

The project objectives for the targeted review of the adventure activities regime are:

- raising safety standards in the adventure activity sector
- avoiding a chilling effect on the adventure activity sector
- supporting public access to the outdoors/recreation activities.

Currently, we consider safety standards in the sector, in particular to the management of natural hazards, can be improved. Commercial incentives on some operators may have led to a propensity to service market demand at the cost of safety standards around natural hazards, this has been exacerbated further through limited regulatory oversight. We will consider this as part of the consultation process.

At this stage the objectives have not been weighted, but could be. Trade-offs will need to be made between raising safety standards and avoiding a chilling effect on the sector and supporting public access to the outdoors. We expect that the public consultation process will help determine how these trade-offs will be made, for example the different perspectives from key segments such as participants, workers and operators and each segment's relative size.

Section 3: Option identification

3.1 What options are available to address the problem?

The consultation document presents a preferred package of regulatory changes. The consultation process will allow us to consider if any adjustment to the package is required, including the removal or modification of any change proposals included the package and further analysing alternatives for final policy decisions.

As part of developing the package of regulatory change proposals we considered a non-regulatory approach in managing the risks associated with natural hazards. These options are compared below.

Status quo & non-regulatory improvements by WorkSafe to manage risks associated with natural hazards

Since the Whakaari/White Island eruption, WorkSafe has recognised that it needs to better understand and commit to its roles in the adventure activities system. WorkSafe has begun a programme of internal and operational changes to increase its focus on the sector.

Work undertaken so far includes reviewing the guidance currently provided to operators, developing new tools for inspectors, and conducting proactive checks to ensure all businesses providing adventure activities are correctly registered. Further work planned includes reviewing WorkSafe's engagement approach with the sector and relationships with other actors in the regime.

In addition to these operational improvements, WorkSafe is considering making non-regulatory improvements to support the management of natural hazards through changes to the safety audit standard, the audit process and guidance materials.

Under the current Regulations WorkSafe is responsible for developing and continuing to review the Safety Audit Standard.

Key features

Status quo and operational improvements

- Health and Safety at Work (Adventure Activities) Regulations 2016 remain the same.
- WorkSafe continues to strengthen its regulatory leadership role in the regime through operational improvements.

Non-regulatory improvements to support status quo

- Existing non-regulatory instruments such as the Safety Audit Standard, the audit process, guidance materials and regulator enforcement approach updated to support improvements in the management of risks associated with natural hazards.

Operational improvements

WorkSafe's operational improvements have the potential to strengthen how they support the sector. But without regulatory changes there will continue to be gaps in the regulatory framework that limit what the information WorkSafe can require from operators. This will make it difficult for WorkSafe to have the suite of information or tools it needs to intervene, and will not allow WorkSafe to request additional information from operators. Continued gaps in the regulatory framework will make it more difficult for WorkSafe to drive overall behaviour change in relation to improved safety standards. However, guidance can still help with enforcement activities as it provides a benchmark of good performance which inspectors can refer to.

Non-regulatory improvements

Improvements to non-regulatory instruments such as the safety audit standard, the audit process and guidance materials may continue to give operators flexibility to manage risks from natural hazards in a way that suits their individual circumstances. This will support innovation and have a lower compliance burden for operators over regulatory alternatives. These non-regulatory improvements will signal the government's policy intentions around the management of risks associated with natural hazards and may contribute to a better understanding of natural hazard risk management at an operator level. However, this signalling may not be strong enough to address the nature and extent of the problems identified. While changes to the safety audit standard, the audit process and guidance materials is likely to continue to maximise operator flexibility this may exacerbate the non-standardised practices currently in place around the management of natural hazards, leaving the proportion of fatalities related to natural hazards unaddressed.

Changes to the audit standard and audit process will have cost implications for operators. More prescribed standards, or additional areas of focus, will flow through to increased audit costs. Additional prescription around audit processes e.g. shorter

timeframes between on-site audits will also lead to additional costs on operators. WorkSafe will have additional operational costs through the improvement of the safety audit standard and development of guidance materials but costs related to enforcement are likely to remain the same.

Summary

We consider that Status Quo with improvements to the current safety audit standard, audit process and guidance materials will shift safety standards but not to the level required to address the identified problems. This may mean that there is limited reduction in the number of deaths related to natural hazards or an extension to the length of time between catastrophic harm events occurring in the sector. This could have a negative impact on people's willingness to participate in adventure activities and on New Zealand's brand, indirectly chilling the sector over the longer term.

Non-regulatory improvements will increase operator costs but we expect this to be a marginal increase. This will support the sector to recover from the impacts of COVID-19 and continue to support New Zealander's access to the outdoors.

Option 1: Regulatory changes to support WorkSafe strengthened regulatory role

In addition to WorkSafe's operational improvements regulatory changes could be made to support WorkSafe's strengthened regulatory leadership role.

For WorkSafe to act effectively it needs to have good information about who is providing adventure activities, the types of activities are occurring, and the risks workers and participants face. Currently, WorkSafe gets limited information on operators making it difficult for them to understand the health of the sector.

The HSW Act requires businesses and other operations to notify WorkSafe as soon as possible after certain "notifiable incidents" occur. This provides WorkSafe valuable information about near-miss events. This current definition of notifiable incidents focuses on risks from traditional industries but is less suited to the type of near-miss events that occur in adventure activities e.g. near misses from natural hazards or equipment failure.

WorkSafe currently has several regulatory powers that can be used to stop activities going ahead. However, these current powers can be difficult for WorkSafe to use in some cases. For instance, it can be difficult in some cases to show that a person is immediately going to be exposed to a serious risk, or that a person's life has in fact been endangered.

Key features

- Require operators to register directly with WorkSafe.
- Increase the information operators are required to provide WorkSafe when registering.
- Require operators to report key indicator information to WorkSafe on an annual basis.
- Create a list of "notifiable incidents" specific to the adventure activities sector.
- Expand WorkSafe's powers to decline to register/suspend/cancel registrations.

Regulatory changes will enable WorkSafe to establish a direct relationship with registered operators, increase the information received as part of the registration process and receive key performance information from operators on an annual basis. This will support WorkSafe to undertake trend analysis and build a profile of the sector including identification of higher risk activities. Creating a list of “notifiable incidents” specific to the adventure activities sector will further enable WorkSafe to identify high-risk operations and if required these notifications could be used to trigger WorkSafe’s general inspectorate function.

Expanding WorkSafe’s powers to decline to register/suspend/cancel registrations will give them flexibility in when they are able to intervene. WorkSafe could suspend an operator’s registration and prevent them from providing this adventure activity until they have taken steps to address any safety problems, for instance changing their route to avoid dangerous areas or improving their equipment. If the operator was unable or unwilling to address these issues, WorkSafe could cancel their registration to provide the adventure activity

Summary

Compared to status quo, we consider that Option 1 will improve safety standards. The strengthened role of WorkSafe is likely to support operator compliance. This will likely to mean a reduction in the number of deaths in the sector. However, with the exception of notifiable incidents, the changes are not linked to natural hazard management so it is uncertain whether they will be able to sufficiently target a reduction in natural hazard fatalities or catastrophic events. If there isn’t a reduction in natural hazards fatalities or catastrophic events related to natural hazards continue to occur at the current rate then this has the potential to have a negative impact on people’s willingness to participate in adventure activities and on New Zealand’s brand over the longer term, indirectly chilling the sector.

Because the regulatory changes relate to the role of regulator we consider there will be negligible cost implications for operators. This will support the sector to recover from the impacts of COVID-19 over the short term and continue to support public access to the outdoors.

Funding for WorkSafe has been allocated through Budget 2021 which will support the cost of these changes. We do not expect additional funding to be required to implement this option.

Option 2: Option 1 + regulatory changes to support a risk classification system

In addition to option 1, a risk classification system could be introduced. This would strengthen the regime by developing a system to better assess and recognise risks.

We know that not all adventure activities carry the same level of risk. Both the type and degree of risk faced by participants and workers can vary greatly across different activities. However, the current regime does not currently provide a way to differentiate between different risk levels. All operations that meet the definition of an “adventure activity” are required to register in the same way and are assessed against the same safety audit standard.

Differences in risk levels between different activities are also not always well communicated. We think there is an opportunity to better recognise and communicate

these differences in risk level through introducing a risk classification system and improving risk disclosures to participants.

Key features

- MBIE and WorkSafe, with other relevant government agencies, would develop the criteria underpinning the risk classification system.
- The criteria for each adventure activity to be scored using both environmental and activity technical risk categories:
 - Environmental risks including both risks from natural hazards and risks from other hazards due to the environment they operate in
 - Activity technical risks that arise from the type of the activity being provided. These include risks from equipment failing and the technical skill required of participants to take part in the activity safely.
- Operators would apply the risk classification criteria and assign each activity they offer an overall “risk score”.
- As part of audits, auditors and technical experts would discuss the classification criteria with operators. For an operator to pass their audit the auditor would need to be satisfied the operator had assigned an appropriate score for their activities.
- WorkSafe, when accepting an operator for registration, would be able to examine the risk classification provided by an operator.
- The risk classification system would set audit requirements that reflect these different categories of risk including variations in length between on-site audits. Activities that are high risk would have more frequent on-site audits.
- A range of guidance materials and examples would be created to explain the risk classification system, and to help operators and auditors understand how it should be applied to particular operations.

and

- Require additional prescription on the level of risk disclosure to participants in regulations or the Safety Audit Standard. Including:
 - Requirements about how risk disclosures should be made (e.g. information available before booking, meeting language needs of participants, guides updating participants of risks during activities)
 - Requirements about the minimum information disclosures should include (e.g. Information about what hazards the activity will encounter and how these are managed, level of difficulty involved in the activity, availability of emergency assistance)

A risk classification system would ensure both natural hazard and activity technical risks are considered by operators and safety auditors through the audit process. The system would enable WorkSafe to identify high-risk activities. The responsibility for determining acceptable risk levels would fall on the government through the development and implementation of risk classification criteria. The risk classification system and criteria would be supported by guidance. This would give safety auditors and operators clarity around Regulator expectations, enabling them to more easily determine when activities are too risky to take place.

A risk classification system could become part of the way WorkSafe identifies which adventure activities become priorities for support. Using a risk classification system as part of its prioritisation will also give WorkSafe a transparent and easily understandable way to communicate why they may be focusing resources on particular types of activity.

Risk classifications would offer a way to introduce more flexibility into the registration and audit approach. For example, if more prescriptive requirements are introduced into the safety audit standard these could apply only to higher risk classification operators. Over time, other requirements such as how frequently an operator is required to register and be audited could also be adjusted to reflect their risk classifications.

A risk score would be a relatively simple and understandable way to communicate the degree of risk an activity poses and how it compares to other activities. This will help participants to make informed decisions and select activities suited to their skill level and appetite for risk.

Introducing more detailed requirements on risk disclosures to adventure activity participants will also ensure participants are fully informed of the risk involved in adventure activities and can make informed decisions on whether to participate in the activities. Risk disclosure is an indirect way to support operators to manage the full range of risks their activities encounter, including natural hazards.

Introducing of a risk classification system into the regime may require an extended implementation phase to allow the framework and criteria to be developed and then implemented. Education activities to support sector awareness and understanding will be required.

Summary

Compared to Option 1, we consider that Option 2 will significantly increase safety standards across the sector and target regulator, operator and participant attention towards risks associated with natural hazards. By implication we would expect to see a reduction in the number of deaths related to natural hazards in the sector and a reduced frequency of catastrophic harm events occurring. This could positively impact people's willingness to participate in adventure activities and on New Zealand's brand over the longer term.

Because the regulatory changes relate mainly to the role of the Regulator and broader government we consider there will be minimal cost implications for operators. These costs are associated with introducing a risk classification system into the audit process, and more prescribed risk disclosure processes. Given the risk classification system will be supported by published criteria and guidance materials we think any associated costs for operators will be minimal as the supporting materials will provide operational clarity.

Due to improved measures to disclose risk to participants we consider there will be an increase in public confidence in the sector's approach to safety. This will support continued access to the outdoors.

The risk classification system introduces in a new approach for the Regulator in managing risk. It shifts some aspects of risk management from the operator to the Regulator, and broader government, by requiring them to define risk levels. Operators will still be required to identify and manage risks within this context. This is contrary to WorkSafe's current approach where operators are generally responsible for all aspects

of the identification and management of risk as far as reasonably practicable. However, we consider that the adventure activities sector with its prevalence of natural hazards presents a special case. It is unrealistic to expect an operator to make decisions around natural hazards when the environment is highly uncertain as well as high risk and when the viability of their business might be at stake. By comparison, the Regulator, and wider government, is better resourced, has a system level perspective and can access government-wide scientific advice to assess and monitor risk levels but this more active role is likely to come with an increased cost for government.

We expect the risk classification system option to require additional effort for the government to develop and WorkSafe to implement and administer. WorkSafe has been allocated additional funding for improvements to the Adventure Activities regime through Budget 2021. Any further funding could either come from WorkSafe baselines, an increase in the Health and Safety at Work Levy or Crown funding.

Option 3: Option 1 + regulatory change proposals to expand operator and landowner duties to better manage risks associated with natural hazards

In addition to Option 1, regulatory changes to support the management of natural hazards by landowners and operators could be introduced. This would be done through providing clear duties about who is responsible for what in managing hazards, ensuring operators have access to good information about hazards and ensuring operators have effective risk management systems in place.

Key features

Duties on landowners

- Require landowners to provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about).

Or,

- Require landowners to assess and manage the risks of natural hazards on their land when granting permission for adventure activity operators to operate on their land.

Duties on registered operators

- Specific requirement that operators to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities.
- Specific requirements to have processes in place to consider when risks may be unacceptable and call activities off.

Providing requirements for landowners to inform operators about natural hazard risks on their land acknowledges that multiple parties are involved in the management of natural hazards, and that operators aren't always in the best position to identify and manage natural hazard risks. Duties on landowners' supports information flows to the operator so they can made well-informed decisions around natural hazards. Requiring landowners to manage access to their land to ensure risks are kept to an acceptable level recognises that one of the most effective risk mitigation measures for natural hazards is controlling the number of visitors exposed.

Providing requirements for operators to manage natural hazards will ensure all operators are following good practices, and encourage more consistent and improved standards of practice towards managing natural hazard risks. It also requires operators to give regard to information provided by landowners about natural hazards. Operator duties emphasise the importance of clear standards for deciding on when risks are and are not acceptable and whether activities should take place.

These requirements would be in addition to general duties in the HSW Act and will make it easier for WorkSafe to emphasise operator and landowner duties at a sector level and target enforcement action against non-compliance.

We expect the regulatory changes in Option 3 could be implemented in a reasonably short timeframe. Any supporting changes to the audit safety standard and guidance materials may require additional time. Education activities to support sector awareness and understanding will be required.

Summary

Compared to Option 1, we consider that Option 3 will significantly increase safety standards across the sector and strongly target operator and landowner attention towards risks associated with natural hazards. By implication we would expect to see a reduction in the number of deaths related to natural hazards in the sector and reduced frequency of catastrophic harm events.

Option 3 recognises that landowners have an active role in supporting operator decisions around acceptable risk levels. Option 3 places the responsibility for decision making in regard to what is an acceptable level of risk on landowners and operators. The Regulator will monitor the compliance of operator and landowner duties. As this Option is more in-line with WorkSafe's current approach, we would expect there to be minimal need to increase funding for the Regulator.

Option 3 will increase administrative and safety audit costs for operators. A preliminary estimate, which will be tested through consultation, suggests the cost of operator safety audits will increase by a range of 5% to 15% dependent on the size and nature of the operation.

There will also be an increase in costs for landowners. DOC consider that the requirement to manage natural hazard risks is a significant departure from their current functions would be costly to implement and may require additional Crown funding. LINZ and individual territorial local authorities may face similar cost implications. While some of the additional landowner costs could be passed on to operators it may be that not all costs are recoverable.

While cost increases for operators may be relatively small for some, they will more significant for others, and this will likely have a chilling effect on the sector, especially in the current COVID environment. However, this could be offset by participants' willingness to pay more for safer activities or the brand benefits that come from adequately addressing risks from natural hazards.

Including specific requirements on landowners has potential to reduce access to the outdoors as landowners may choose to not grant access to land as a way to avoid any associated costs. This may reduce New Zealander's access to the outdoors.

Funding for WorkSafe has been allocated through Budget 2021 which will support the cost of these changes. At this stage, we would not expect additional funding to be required to implement this option. If further funding is required it could either come from WorkSafe baselines, an increase in the Health and Safety at Work or Crown funding.

3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

The criteria chosen reflect the project objectives and are listed below:

- Improve the management of risks associated with natural hazards within the adventure activity sector
- New Zealanders' and international visitors' access to adventure activities is maintained.
- Compliance and administration costs are proportionate to the level of risk involved for regulated parties and enforcement authorities

At this stage the criteria have not been weighted, but could be.

3.3 What other options have been ruled out of scope, or not considered, and why?

- *List the options and briefly explain why they were ruled out of scope or not given further consideration*

Education activities to support operators to manage risks associated with natural hazards, or removing the Adventure Activities regulatory regime and relying on primary duties in the HSW Act are not considered viable options, as:

- Crown investment in education activities is considered as part of status quo. Education alone is unlikely to induce the level of behaviour change required.
- Removal of the adventure activities regulatory regime would lead to poorer outcomes and it is unlikely that it would achieve the core project objective of raising safety standards. Removes the ability to tailor interventions to the characteristics of this sector that make it particularly risky.

Section 4: Impact Analysis

	Status quo with non-regulatory action	Option 1 – strong regulator	Option 2 – option 1 + risk classification system	Option 3 – option 1 + duties on operators & landowners
Increase awareness and management of risks associated with natural hazards	<p>+</p> <p>Signal the government's policy intentions around natural hazards, may not be strong enough to address the nature and extent of the problems identified.</p>	<p>+</p> <p>Unlikely to increase awareness and management of natural hazards as the majority of changes are not targeted specifically at this problem.</p>	<p>++</p> <p>Sends a strong signal that risks (including natural hazards) in the sector will strategically managed. Gives operators and safety auditors clarity on how to manage risks to acceptable levels.</p>	<p>++</p> <p>Explicitly requires landowners and operators to manage natural hazards as part of their operations.</p>
Compliance and administration costs are proportionate to the level of risk	<p>0</p> <p>Minor cost implications for operators but the impact on safety outcomes minimal.</p>	<p>+</p> <p>Supporting WorkSafe's strengthened regulatory role is likely to improve compliance more generally, this will help raise safety standards in the sector.</p>	<p>+</p> <p>There will be cost implications on government and the Regulator, as the risk classification system present a new approach for managing risk. The cost increase on operators will likely be minimal.</p>	<p>++</p> <p>Operators and landowners will face increased costs. Landowners may have to consider new ways of operating to meet their duties.</p>
New Zealanders' and international visitors' accessibility to adventure activities is maintained	<p>0</p> <p>Unlikely to influence market dynamics. If safety concerns continue, then participation in adventure activities may diminish over the longer term.</p>	<p>+</p> <p>Unlikely to influence market dynamics. If safety concerns continue, then participation in adventure activities may diminish over the longer term.</p>	<p>++</p> <p>Reduced fatalities and catastrophic events will support participation in adventure activities over the longer term.</p>	<p>+</p> <p>Reduced fatalities and catastrophic events will support participation in adventure activities over the longer term. But duties on landowners could reduce the number of locations activities take place.</p>
Overall assessment	0	+	++	++

Section 5: Conclusions

5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

MBIE's supporting analysis indicates that the package of regulatory change proposals can work together to achieve safety outcomes. Within this package there are two viable regulatory options available to achieve improved safety outcomes, which taken individually will have lower compliance costs. Both options require regulatory change to support WorkSafe's strengthened leadership role. However, the two options present different approaches to the management of natural hazards. The first utilises a risk classification system and the second imposes duties on operators and landowners.

Our preliminary assessment is that Option 2 and Option 3 are most likely to drive improvements in safety standards through increasing the awareness and management of natural hazards. However, Option 2 and 3 diverge in relation to the other criteria. Analysis suggests that Option 2 is more likely to encourage access, whereas Option 3 is more likely to ensure costs remain proportionate.

Because the analysis is inconclusive in terms of a single preferred option we recommend including both Options 2 and 3 in the consultation document. We recommend presenting the options as a package of regulatory change proposals to enable the public to provide feedback on all the individual components.

A more detailed cost-benefit analysis, developed in response to the consultation feedback, will allow us to test individual components that sit within the package for efficacy and impact and against project objectives. This analysis will enable us to reconsider the viability of the package and the two viable options or whether an alternative combination would work best to address the problem identified.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach compared to taking no action – preliminary estimates

Registered operators	Reviewing safety management systems to ensure they meet new obligations, including contracting natural hazard experts, providing information to WorkSafe	Low Current average costs of audits approx.	Low
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	<p>Increased audit costs due to expanded remit</p> <p>Potential that some operators go out of business due to increased compliance costs</p>	<p>\$10,000 over three years. Initial projection is a 5-15% increase from changes = \$400 - \$1200 per operator (\$127,600 - \$382,000 across all registered operators).</p> <p>Medium</p>	
Landowners	<p>Cost to landowners to ensure they meet new obligations, including assessing natural hazard risks and managing access to land</p> <p>Department of Conservation and local government are major landowners for the purpose of landowner duties. They will need to undertake research and assess concessions and other operations to ensure they're meeting new duties.</p>	<p>Medium.</p> <p>Obligations are largely clarifications of existing duties.</p>	Low
WorkSafe	<p>Develop guidance on new requirements – particularly good practice guidance for natural hazards and risk matrix</p> <p>Operational policy resource to implement changes</p> <p>Education and engagement</p> <p>Minor new IT resources to update operator registration system to align with new process and operationalise new notifications.</p>	<p>Approx. \$2.6m (\$2.22m funding has been approved through Budget 21/21 to fund operational policy, development of guidance, natural hazard expertise, education and engagement activities to support policy changes to improve the management of natural hazards)</p>	Medium
Wider government	<p>There may be a cost on government for scientific advice to support development of proposals related to the management of natural hazards and on-going input into decision making</p>	<p>Low</p>	Low

Other parties	Increased costs to participants for activities, as operators pass costs on Fewer people and schools choose to participate in adventure activities	Low	Low
Total Monetised Cost		\$2.7m - \$2.9m	
Non-monetised costs		Low	

Expected benefits of proposed approach compared to taking no action – preliminary estimates

Adventure activity participants and workers	Improved safety of workers and participants Increased public trust in safety standards and in WorkSafe Reduced loss of life	Medium	Low
Regulators	Increased information about operators, allowing more effective targeting of resources	Medium	Medium
Wider government	Reduced draw on ACC and the health system	Medium	Low
Other parties	Economic benefits that come from international visitor spending are maintained through addressing questions around safety in the adventure activities sector Reputational benefits to NZ tourism from addressing questions around safety in the adventure activities sector Flow on benefits to other sectors from improved information about identifying and managing risks associated with natural hazards	Medium Medium Low	Low
Total Monetised Benefit			

Non-monetised benefits		<i>Medium</i>	
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5.3 What other impacts is this approach likely to have?

Increasing requirements on adventure activity operators may have unintended impacts on the adventure activity market.

- It may cause a number of operators to consolidate their offerings with other providers, it may cause some operators to leave the market. This would mean fewer recreational activities for schools and fewer tourist offerings for visitors.
- It could increase the drivers of perverse outcomes where operators offer adventure activities at the definitional margins to avoid having to register and incur the cost of the safety audit and additional scrutiny of the regulator, this could lead to lower safety standards and more harm.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

If the public consultation and further analysis indicate regulatory change is required, then it would be given effect to by amending the Health and Safety at Work (Adventure Activities) Regulations 2016.

- Any changes would likely be supported by corresponding changes to the safety audit standard for adventure activities developed by the regulator under the Adventure Activities Regulations.
- The regulator is likely to also support changes through the publication of guidance materials.

Ensuring operators have access to clear guidance and information on how to meet these duties will be critical to ensuring this programme's effectiveness.

If regulatory changes are made MBIE will work closely with the sector, WorkSafe and other interest groups to work through how implementation any changes will be made. As part of this process the transitional time required to allow parties to make these changes will be considered.

6.2 What are the implementation risks?

There is a low risk that over time WorkSafe will refocus on other sectors and regulatory regimes over adventure activities, meaning that the longer term benefits of the regulatory changes are reduced. We consider this to be a low risk because of current programme of operational work being undertaken by WorkSafe to strengthen their regulatory leadership role in the regime. The risk of this happening over the longer term will be addressed through a research and evaluation plan to monitor the performance of the regime, and measures to improve public confidence in WorkSafe's continued role in the regime. Conversely, there is a risk that over time WorkSafe over-prioritises this sector compared to sectors without reporting requirements.

There is a moderate risk that proposals for regulatory change are poorly received by the adventure activity sector and lead to unintended behaviours. This risk can be mitigated by working closely with industry bodies as part of public consultation to hear any concerns or issues, and refine the proposals if necessary to make sure that they are workable and proportionate.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

If regulatory changes are made to the regime, MBIE and WorkSafe will work together to develop a monitoring and evaluation plan.

To support a greater understanding of risks in the sector, additional research is planned on the impact and likelihood of catastrophic events on the adventure tourism sector to understand the impact, frequency and severity of catastrophic events.

7.2 When and how will the new arrangements be reviewed?

MBIE has recommended that a first-principles review of the Adventure Activities Regulations be undertaken, commencing in 2026. Evidence from MBIE’s and WorkSafe’s evaluation and monitoring plan will support the first-principles review, Some of the key focus areas will be:

- The definitional scope of adventure activities
- The third-party authorisation design
- The over-lap with transport regimes.

MBIE’s ability to undertake a review will depend on available resources and competing priorities.

A performance study of the regime was undertaken in 2016. Some stakeholders have suggested this performance study should be repeated to examine the more recent performance of the regime. MBIE expect the proposed evaluation and monitoring plan will address this.

Annex 1: Natural hazards, fatalities and catastrophic harm events

A comment on data and methodology

Regulations for the adventure activities sector were implemented in 2014.¹⁷ This means information about adventure activities as a legally defined and regulated sector is limited to a relatively small timeframe.

While there is a range of historic fatality data available, it can be difficult to apply the definition of “adventure activities” regulated under current regulations to this data. Historic data is generally categorised under alternative labels such as adventure tourism or outdoors recreation, and the limited information about some incidents makes it difficult to determine whether an activity would be considered an “adventure activity” under current definitions.

The following data and analysis therefore represents a best approximation based on our understanding of the available data. When we use the term ‘adventure activities sector’ in the analysis it is intended to convey this approximation.

Data on serious harm, other than fatalities, in the sector is also limited. While we have some information about serious injuries in the sector, this does not always record injuries to participants and can be unclear about whether injuries occurred in an adventure activity or in personal recreation.¹⁸ Because of this limitation we have adopted fatality data as the best available representation of serious harm in the sector.

We have cross-referenced WorkSafe fatality data with a range of other sources to draw our conclusions for the purpose of the discussion.

The data sources include:

- Coronial reports of deaths in the adventure activities sector
- *Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New Zealand 2009/10 Final Report* (June 2010), Department of Labour
- *Risk comparisons for Department of Conservation (DOC) Visitors and Workers* (July 2020), a report produced by Tony Taig on behalf of GNS Science
- Media articles on New Zealand natural hazards
- Media reports of deaths in the adventure activities sector
- WorkSafe fatality and notifiable event data
- WorkSafe’s register of work related catastrophic events

What are natural hazard risks?

Natural hazards are physical, quick-onset natural events with a degree of localised impact that have the potential to cause fatalities.

The targeted review found 12 types of natural hazard risks that could affect registered adventure activity operations. These included extreme weather (such as high winds or severe

¹⁷ With the exception of the accreditation scheme for auditing bodies, which was introduced in late 2015.

¹⁸ This anomaly is due to the way ACC injury data is collected.

temperature changes), water surges and flooding, rockfalls, landslides, avalanches, volcanic eruptions, geothermal hazards and rapids.¹⁹

Earthquakes are excluded from this definition as they can occur on such a large scale that participating in an adventure activity would not significantly increase an individual's exposure to the risk. Several consequent natural hazard risks that can arise as a result of earthquakes, such as tsunamis and rockfall, are however included.

Incidents involving natural hazards are a common feature of New Zealand adventure activities, and often receive considerable media and public attention. Examples of such incidents include the 2008 Mangatepopo Gorge tragedy which claimed seven lives, the Paritutu Rock incident (Taranaki Outdoor Pursuit & Education Centre coasteering tragedy) which claimed three lives in 2012, incidents involving mountaineers in 2013 and 2019, and the 2019 Whakaari eruption that claimed 22 lives.

All these incidents resulted in the deaths of multiple people. In addition, there are also incidents involving the death or serious injury of a single person, which tend to receive less attention and may go unreported in the media.

What does the data show about harm from natural hazards?

Almost all registered adventure activities experience some risk from natural hazards. The targeted review found that 311 of the 312 operators registered in November 2020 had to manage risks from natural hazards in some way.

Many of these hazards present a risk of catastrophic harm, where if a major incident occurs it can cause multiple deaths or serious injuries.

The proportion of fatalities related to natural hazards remains constant:

While fatality rates in adventure activities overall have reduced since the introduction of regulations in 2014, natural hazards have remained a significant source of fatalities.

In 2010, before the Adventure Activities Regulations were introduced, the Department of Labour conducted a review into safety in the adventure tourism and outdoors sectors.²⁰ This review examined 39 fatalities in the sectors that occurred over the five-year period between July 2004 and June 2009. 29 of these deaths occurred in activities that would be considered "adventure activities" under current regulations.

Of these 29 fatalities in the 2004-2009 period, 13-18 deaths resulted from failures to manage natural hazards, depending on the definition of natural hazard used.

A significant part of the harm that occurs in adventure activities comes from natural hazards. In the five year period between November 2014 (when the Adventure Activity Regulations took effect²¹) and November 2019 there were nine fatalities in adventure activities. Four of these fatalities resulted from natural hazard events. The total number of fatalities increases to thirty-

¹⁹ A fuller explanation of natural hazards and how they interact with adventure activities can be found in Annex 1 of the targeted review.

²⁰ *Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New Zealand 2009/10 Final Report, 9 June 2010*, Department of Labour, NZ 2010

²¹ With the exception of the accreditation scheme for auditing bodies, which was introduced in late 2015.

two when the timeframe is extended to December 2019. This includes twenty-two fatalities from the 2019 Whakaari eruption and one fatality on the Routeburn Track. Twenty-six of the thirty-two fatalities resulted from natural hazard events.

Table 1: Summary of adventure activities fatalities notified to WorkSafe: 1 November 2014 to December 2019²²

Year	Month	Summary of incident	Natural hazard event	Registered adventure activity operator
2014	November	One participant died on guided diving expedition near Hahei on the Coromandel Peninsula.	No	Yes
2015	August	One participant killed in avalanche while heliskiing in the Hector Mountains.	Yes	Yes
2018	October	Two guides died on a mountain climbing expedition in Mt Cook National Park.	Yes	No
2018	December	One participant drowned while kayaking near Tapeka Point and Roberton Island.	Yes	Yes
2019	March	One guide and one participant on a yamaha 6 seater all-terrain vehicle fatally fell into a ravine in the Waitaki District.	No	No
2019	November	Two participants fatally fell while alpine climbing in the Remarkables.	No	Yes
2019	December	One participant fell to death on Routeburn Track while on a guided walking tour.	No	Yes
2019	December	Twenty participants and two guides died in a volcanic explosion or from sustained injuries while on guided tours of Whakaari	Yes	Mix of registered and unregistered operators

²² These fatalities have been notified to WorkSafe, confirmed as meeting WorkSafe's reporting criteria (excludes deaths from natural causes), recorded as occurring in the adventure activities focus area, and identified as relating to the Adventure Activities Regulations. It does not include information on work-related fatalities that occurred within other regulator's jurisdictions (e.g. Maritime New Zealand (maritime), Civil Aviation Authority (aviation), or NZ Police (road)).

Natural hazards are also the major source of catastrophic events in the adventure activities sector:

Natural hazards also appear to be the main cause of catastrophic incidents in the adventure activities sector. “Catastrophic incidents” are where more than five people die as a result of a single event.

While we have limited historical data to draw from, there appears to be catastrophic events (or near-catastrophic events) related to natural hazards occurring frequently over a thirty year period. These events take place at least every ten years in the adventure activities sector, resulting in around 8 fatalities and 7 serious injuries per event.

Table 2: Catastrophic or near catastrophic incidents resulting from failures to manage natural hazard risks in the adventure activities sector

<i>Incident</i>	<i>Natural hazard event</i>	<i>Consequences</i>
2019 - Whakaari/White Island eruption	Volcanic eruption	22 fatalities 25 injured
2012 - Paritutu Rock incident*	Water surge	3 fatalities 11 remaining in the group at risk of death
2008 - Mangatepopo Gorge canyoning	Flood	7 fatalities 4 injured
2003 - Southern Alps, Mt Tasman*	Snow avalanche	4 fatalities 2 injured
2000 - French Pass drift diving*	Water surge, tidal currents	3 fatalities 4 injured
1990 - Ruapehu snow camping/caving	Blizzard	6 fatalities 7 injured
Total		45 fatalities 42 injuries

The periodic occurrence of catastrophic events has much to do with the nature of adventure activities, which are defined by the deliberate exposure of a participant to serious risk to their health and safety, as well as the group make-up of many of the activities.

It is unlikely we will be able to eliminate the risk of catastrophic events entirely from adventure activities, given that by definition many activities expose participants to serious risks from

dangerous terrain or waters. However, we can seek to reduce the frequency at which such catastrophic events occur.

The Department of Conservation has recently been conducting work on the management of natural hazards on public conservation land. Indications are that a catastrophic natural hazard harm event could occur every 30 to 50 years on a DOC visitor site. Climate change is likely to increase the frequency of significant natural hazard events in the future. The table below provides some indicative examples of such events.

It is likely that cross-government work will need to take place before such thresholds can be set.

Table 3: Examples of foreseeable catastrophic natural hazard events that have potential to impact adventure activities and members of the public on public conservation land in future

<i>Location</i>	<i>Natural hazard event</i>	<i>Consequences</i>
Tongariro (Red Crater)	Volcanic eruption	Would depend on the scale, duration and frequency of exposure, and time of day but in peak tourist season it could involve multiple individuals and tour groups.
Lake Rotoroa, Rotomahana and other lakes, Tasman Glacier	Landslide or glacial collapse into lake	There are numerous locations where unstable slopes mean there is a risk of landslide or glacial ice collapsing into lakes or other enclosed bodies of water causing water surges.
Southern Alps, Taranaki, Ruapehu	Avalanche	Avalanche risks increase in different seasons and in some locations where topography combines with popular skiing, walking and climbing routes meaning elevated overall risk.
Heliskiing in Southern Alps or glacier terrain	Avalanche (icefall) / crevasse hazards	Alpine conditions change continually and although guides are responsible for assessing and managing risks to individual skiers and climbers, there is potential for multiple groups to be caught in a single event.
Mintaro Hut, Milford Track, Fiordland	Landslide/rock collapse	Geological risk has been calculated and a hut is being moved to another location to remove the risk of a catastrophic event.
Southern Alps	Rock avalanche	Rock avalanches of up to several million m ³ of rocks occur at regular intervals in alpine regions. ²³ Their paths are identifiable and geology allows the calculation of the likelihood of occurrence.

* While not strictly meeting the definition of a catastrophic event these examples have been included because of the high likelihood that the injured parties or remaining group members could have died

²³ There have been 16 spontaneous rock avalanches in the Southern Alps between 1981-2013, ranging in size from 10,000m³ to 15,000,000 m³.

Catastrophic workplace events in New Zealand more generally:

To provide context we reviewed the number and type of catastrophic workplace events that have taken place in New Zealand over the same timeframe (1990-2019, drawing on WorkSafe's register of work related catastrophic events. For the purpose of the analysis we make no distinction between the Health and Safety and transport regulatory regimes.

- Between 1990 and 2019, there have been ten work related catastrophic events in New Zealand
- Six out of the ten events took place in the arts and recreation industry. Of these, four were tourism related and two involved commercial recreation activities.
- Five out of the ten events involved natural hazards.
- By comparison, Australia had four work related catastrophic events over the same timeframe. One took place in the arts and recreation industry and involved a natural hazard event.
- The United Kingdom over the same timeframe had 13 work related catastrophic events. One of the 13 events was in the arts and recreation industry and two of the 13 events involved natural hazards.

Table 4: Catastrophic workplace events in New Zealand between 1990-2019

Year	Event	Deaths	Industry classification	Purpose of activity	Natural hazard events
1990	Ruapehu snow camping/caving	6	Education and training	Training camp for military personal	Yes - extreme weather
1993	Franz Josef Glacier air crash	9	Arts and recreation services	Tourism - sightseeing	No
1995	Cave Creek disaster	14	Education and training	Outdoor recreation course	No
2008	Mangatopopo tragedy	7	Arts and recreation services	Adventure activity - recreation	Yes - flooding
2010	Fox Glacier air crash	9	Arts and recreation services	Adventure tourism - skydiving trip	No
2010	Pike River mine disaster	29	Mining	Commercial mining	No
2012	Carterton hot air balloon crash	11	Arts and recreation services	Adventure tourism	No
2012	Foveaux Strait fishing tragedy	8	Agriculture, Forestry and Fishing	Commercial fishing	Yes - extreme weather
2016	Kaipara boating tragedy	8	Arts and recreation services	Recreation - fishing charter	Yes - extreme weather
2019	Whakaari/White Island eruption	22	Arts and recreation services	Adventure Activity - tourism	Yes - volcanic eruption

Annex 2: Stakeholder views

Stakeholder views expressed in Phase 1 of the targeted review

Key stakeholders who are involved in the implementation of the regulatory regime were interviewed as part of phase 1 of the targeted review. These stakeholders were: Tourism Industry Aotearoa, Recreation Aotearoa, JAS-ANZ, Certifying Bodies (Integra and Qualworx) and WorkSafe NZ.

Stakeholders have suggested that operators' understanding of natural hazard risks is patchy and greater attention to these in the regime would be beneficial. Increased communication of natural hazard risk to staff and customers and managerial responsibility for cancelling activities based on natural hazard risk were highlighted as areas for improvement.

Natural hazards can be difficult to assess, and operators often do not have high levels of expertise to interpret data about them. Requirements in the safety audit standard to include technical advisors in risk assessments will address this issue, but may have a commercial impact on operators. Operators could be supported in natural hazard risk identification and management through the development of guidance materials.

A key theme from stakeholders was that WorkSafe has had little direct oversight of how operators are performing, relying instead on auditors to identify issues. A general lack of engagement and enforcement activity by WorkSafe was also noted. (Note that WorkSafe is making substantial improvements to the way it carries out its functions in the regime.)

Key organisations involved in implementation consider they have been acting beyond their formal roles to support the regime. TIA considers it has been acting beyond its remit in identifying and convening expert groups to develop activity safety guidelines, and requires funding support if it is to continue to provide these additional functions. JAS-ANZ similarly noted it has been called upon to contribute to the scheme beyond its function as an accreditation body, and that continuing to develop the scheme is the responsibility of the regulator. If these organisations reduce their activities to their formal roles this may create gaps in the regime around the provision of guidance to operators and administration of certifying bodies.

Stakeholder views expressed in TIA/RAs adventure activities sector survey, April 2021

The Adventure Activity Sector Survey canvassed views on the management of natural hazards and the role of WorkSafe NZ. A selection of verbatim comments from this survey is included below with a summary comment made about the impact of costs on operators.

Management of risks associated with natural hazards

- They [operators] do not appear to be good at managing rare, catastrophic events.
- It needs to be recognised that nature is unpredictable. The term "adventure" implies an element of the "unexpected". The term safety "management" is misleading, because it leads you to believe that you have everything under control.
- If a safety auditor hasn't seen the hazards or an example of them then there are gaps that could be missed by the organisation. Also if the auditor doesn't adequately understand the activity or the type of hazard.
- Operators I have worked for assess and try to manage natural hazards as part of their systems. I think the real challenge is in how quantify and communicate risk to

clients. I have found clients to be dismissive of risk disclosures and unable to visualise or comprehend the risks they are assuming.

- Audits must reflect what level the natural hazards are and what would be the outcome if they are encountered.
- Our plans always include the theory of how it should work, however, only real events test that e.g. the Tsunami alert recently modified our plans...
- [Management of risks associated with natural hazards] Likely varies throughout industry.
- The current audit standards seem to pay little attention to natural hazards, focusing instead (largely) on process based issues.
- There is already a higher than possibly considered focus on natural hazards. Rafting and kayaking audits focus strongly on river levels and changes to flows, including rainfall. Sea kayaking looks at tidal and wind activity. Mountain audits scrutinise avalanche and weather assessments carefully. TE's in these fields are trained to evaluate natural hazards related to their activities from an early stage in their careers.

Role of WorkSafe

- The adventure tourism sector is specialised and does not fit easily into the normal type of work place set-up, because in most cases the natural environment is the work place. Nature cannot be regulated! Members of outdoor industry groups should be engaged by WorkSafe to monitor/review safety standard.
- They [WorkSafe] need to get active in the adventure regulation space again. Used to be well resourced (stakeholders, workshops, ASGs) and a focus. The 'job' wasn't done.
- WorkSafe seem to provide little leadership and the sector relies on its trade associations, like TIA, to provide advice and direction. Greater two-way communication between WorkSafe and the businesses they seek to regulate, and a free flow of ideas and information, could only be of benefit.
- More funding for ASGs and updates to the SupportAdventure website. More enforcement action against operators not adhering to Regulations or operating without registration.
- They [WorkSafe] have staffing and resource issues, however they need to be seen to be more independent and also follow up on reports regarding non-compliant operators and infringements.
- Use Maritime New Zealand's (MNZ) audit process as an example. MNZ uses external surveyors for 2 yearly vessel safety checks which double as systems audits. But also use their own staff to conduct audits as well. They schedule their own audits based on an operators safety rating. High risk operators are audited once per year or more frequently while low risk operators are audited as little as once every five years. MNZ uses a risk rating system to establish an operators risk "score" and sets auditing frequency based on the score. Occurrences of Notifiable Events, many different vessel types or areas of operation, poor attitudes to safety, lack of experienced staff all increase an operators risk score and therefore the frequency of their audits. This also means operators have a direct connection with governing body staff.

Improvements to the regime

- More workshops on simple SMS, good practice, examples of continual improvement and effective risk management programmes. Networking with others with guidance from experts.
- Simplify it by bringing it back to industry to establish specific essential safety parameters starting with qualifications, training, mentoring, company support requirements and industry qualified auditors.
- WorkSafe should set up a new incident reporting register to monitor hazards, incidents and safety trends in parts of the adventure industry.
- Relevant qualifications and measured success in experience should be the key collateral for safety management.
- Instead of operators paying certification bodies for audits, all audits are funded through a levy (like ACC) and certification bodies are paid out of this levy. ASGs should be developed or reviewed for all activities.
- There should be strong recommendations, perhaps even legislation, for collaboration between operators regarding sharing hazard identification and also sharing standard operating procedures when it comes to working with natural hazards.

Cost of compliance

Almost every respondent raised the question of cost. There is a very strong wish for costs to be reduced for operators, and not increased, by any changes made.