

Natural Products Marketing (BC) Act Mandatory Notifiable Avian Influenza Insurance Review

*Phase 2 Report
Scope of a Financial Response
March 17, 2017*



Natural Products Marketing (BC) Act

Mandatory Insurance for Registered Poultry Producers

Phase 2 Report – Scope of a Financial Response

Executive Summary

The Mandatory Notifiable Avian Influenza Insurance Review (the “Review”) is intended to provide the regulated poultry boards and commission in BC with the research and analysis to determine whether or not to apply the authorities granted under the *Natural Products Marketing (BC) Act* (the “NPMA Act”) to require producers to maintain insurance against losses resulting from Notifiable Avian Influenza (NAI) discoveries. The regulated poultry boards and commission must ensure that the application of the requirement is in keeping with sound marketing policy. This report is the second phase of a five phase project to conduct the requisite due diligence to support the regulated poultry boards and commission decision making process. This phase establishes the scope of a financial response to return the regulated poultry industry in BC to a system of orderly marketing.

Phase 1 of the Mandatory Insurance Review established that the financial consequences of discovery of a NAI are significant for the poultry industry in BC. The overall economic impact of the 2004 HPAI outbreak was in excess of \$300 million in lost economic activity. It was established that a financial response is required to enable a timely return to a system of orderly marketing, in particular as it relates to covering the extraordinary costs of infected premise cleaning and disinfecting (“C&D”).

Under the *Health of Animals Act* (the “HoA Act”) producers are not eligible for compensation from the Canadian Food Inspection Agency (the “CFIA”) for the cost of infected premises C&D. For the most part, the individual owners of the infected premises have been held harmless from the extraordinary cost of C&D. The \$3 million in extraordinary costs to C&D the 53 infected premises in 2004 were shared by the poultry processors, boards and commission. Approximately \$750,000 in extraordinary costs for the 13 infected premises in 2014 was covered through funding provided by the federal and provincial government through the Canada-British Columbia AgriRecovery Program. The poultry industry emergency operations centre facilitated the C&D process to ensure coordination of resources and timely initiation and completion of infected premises C&D and to address any issues or concerns.

The financial interventions for 2004 and 2014 were equally and if not, more important in the timely initiation and completion of the infected premises C&D. It is questionable as to whether the individual infected premises had the wherewithal to initiate and complete the C&D process in the same time frame without the financial interventions. Leaving the financial responsibility to the infected premise owner compromises the ability of the boards and commission to return the poultry industry to a system of orderly marketing in a timely manner.

The federal and provincial government have stated that a request for AgriRecovery assistance for a future NAI discovery would not be considered as the recurring nature of NAI in BC was not consistent with the policy objectives of the program. The federal and provincial governments have strongly supported the BC poultry industry to examine alternate, industry-led mechanisms to address the financial needs in response to future NAI discoveries.

With Phase 1 having concluded that a financial response was required to address the extraordinary cost of infected premise C&D, Phase 2 further assessed the existing financial and policy supports available; identifying gaps and recommending options for addressing any gaps identified.

The primary gap relates to the federal and provincial government policy position to not support future use of AgriRecovery to address the extraordinary costs of infected premise C&D. The lack of a formalized financial response to cover the extraordinary costs of infected premises C&D limits the boards' and commission's ability to facilitate the recovery of the poultry industry and the timely return to a system of orderly marketing. As such the poultry boards and commission intervention through the commitment of financial support to off-set the extraordinary costs of infected premises C&D accords with sound marketing policy.

The boards and commission have contingencies in place that could provide the financing to cover the extraordinary costs of infected premises C&D in the event of a future NAI discovery. The boards and commission have varying fiscal capacities within their contingencies, but more importantly, a potential limiting factor is the lack of express authority for the British Columbia Chicken Marketing Board and the British Columbia Turkey Marketing Board under their respective marketing schemes to use retained levy proceeds "to pay costs and losses incurred in marketing a regulated product". While the *NPMA* enables boards and commissions that authority under section 11 (1) (o) (iii), the specific exclusion of this enabling authority in the chicken and turkey schemes raises the risk of challenge. While the risk of challenge has been deemed low, the risk of a successful challenge is high. This lack of authority may limit the ability of the boards to withstand a challenge to the sharing or pooling of funds to address the industry-wide costs of infected premises C&D.

The Phase 2 analysis has identified two major policy issues that the poultry boards and commission will need to address:

- Whether the chicken and turkey marketing schemes need to secure the express authority for the two boards to use retained levy proceeds "to pay costs and losses incurred in marketing a regulated product" as it pertains to a NAI discovery.
- The need to act collectively or independently in addressing the extraordinary costs of infected premise C&D.

The Phase 2 analysis also points to the potential for the poultry boards and commission to establish protocols for infected premise C&D. The protocols could include expected timelines for initiating and completing the C&D activities, however, the ultimate responsibility for the sign-off of the decontamination plan and the completion of the C&D of an infected premise rests with the CFIA. With the ultimate responsibility for sign-off on the infected premise C&D process falling within the authority of the CFIA, the boards and commission effectiveness is limited in utilizing such protocols or orders to enable the timely return to a system of orderly marketing.

Gaps have been identified in existing government programs which contribute to the need for the boards and commission to intervene and cover the extraordinary costs of infected premises C&D. The AgriRisk Initiative Administrative Capacity Building program can provide early year support in the delivery of an industry led risk management initiative.

Natural Products Marketing (BC) Act

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Phase 2 Report – Scope of a Financial Response

Expected Outcome

The poultry boards and commission determination on the scope of the financial response required to maintain a system of orderly marketing in response to a Notifiable Avian Influenza (NAI) discovery.

Introduction

The passing of the amendments to the *Natural Products Marketing (BC) Act* (the “NPMA”) in May 2015 made explicit the authority of boards and commissions to require producers to maintain insurance against losses resulting from the interruption or termination of production for any reason or for a notifiable or reportable disease. The regulated poultry boards and commission have given due consideration to the enabling authority and collectively agreed in January 2016 to initiate the Mandatory Notifiable Avian Influenza Insurance Review (the “Review”). The purpose of the Review is to conduct the requisite due diligence in accordance with the SAFETI¹ principles for each board and commission to make a decision on whether or not to implement mandatory insurance requirements to address the financial consequences of NAI discoveries in British Columbia.

This Report is the second phase of a five phase Review and will include the sound marketing policy rationale for mandatory requirements to effectively respond to a NAI discovery, with a particular focus on:

- Identifying gaps in maintaining a system of orderly marketing in the event of a major disease outbreak.
- Options for satisfying a system of orderly marketing.
- Analysis of the options.
- Recommended option(s).

Subsequent reports will be prepared on the remaining three phases:

- Do the conditions of insurance exist
- Do viable insurance delivery mechanisms exist
- What mandatory insurance delivery mechanism is appropriate

Background

The Phase 1 report – Why is a financial response needed, addressed the following questions:

- How to effectively and efficiently return the poultry industry to a system of orderly marketing?
 - Is a financial response necessary?
 - What other options/tools are available to the boards and commission?

¹ SAFETI stands for the British Columbia Farm Industry Review Board governance principles; Strategic, Accountable, Fair, Equitable, Transparent and Inclusive.

The Phase 1 Report provided

- A brief background on NAI
- A summary of the BC Poultry Industry Strategic Risk Management Strategy
- Factors affecting the return to a system of orderly marketing
- The financial impacts to the industry
- Sound marketing policy considerations
 - The need for a financial response to a NAI discovery
 - The options and tools available to address the financial impacts

Phase 1 concluded that a financial response was necessary to address the extraordinary costs of infected premises cleaning and disinfecting (“C&D”). Even with the coordinated response and financial support of poultry processors, boards and commission, it took upwards of 5 years to return the entire BC poultry industry to a system of orderly marketing following the 2004 outbreak; taking over 2 years to re-stock all poultry farms in BC and 5 years to return to pre-2004 production levels.

The federal and provincial governments stated following the 2014 Highly Pathogenic Notifiable Avian Influenza (“HPNAI”) outbreak that they would not consider future industry requests for financial assistance under the AgriRecovery Program given the recurring nature of NAI in BC. The stated government position and the absence of a coordinated industry-wide financial response leave the infected premise owner with the responsibility and financial burden for the extraordinary costs of C&D. As such, the boards’ and commission’s ability to return the industry to a system of orderly marketing is dictated by the infected premise owner’s willingness and timing to initiate and complete the C&D process.

Irrespective of the type of operation that has contracted NAI, the entire poultry industry in BC can be held in abeyance from returning to a system of orderly marketing if the financial burden of infected C&D is not addressed in a proactive manner. An industry-wide financial response to cover or defray the extraordinary costs of infected premise C&D is required and is consistent with sound marketing policy and would support the boards’ and commission’s ability to return the poultry industry in BC to a system of orderly marketing in a timely manner.

Identifying the Gaps

This Phase builds on the findings of Phase 1 to identify and assess the gaps in financial response to a NAI discovery that impact and affect the ability of the boards and commission to return to a system of orderly marketing in a timely manner. The gaps to be examined include:

- Regulatory authority of boards and commission, including fiscal capacity
- Financing the C&D of infected premises
- Mandatory biosecurity measures
- Existing government programs

Regulatory Authority

While the amendments to the *Natural Products Marketing (BC) Act* (the “NPMA”) enable the boards and commission to require producers to maintain insurance against losses resulting from the interruption or termination of production for any reason, the current regulatory framework does not provide equivalent authority to the poultry boards and commission to pay for costs and losses incurred in marketing a regulated product.

The *NPMA* enables the boards and commissions to use retained levy proceeds “to pay costs and losses incurred in marketing a regulated product”². The regulations establishing the British Columbia Chicken Marketing Scheme and British Columbia Turkey Marketing Scheme exclude the above *NPMA* provision from the powers of the British Columbia Chicken Marketing Board (the “BCCMB”) and British Columbia Turkey Marketing Board (the “BCTMB”). The powers of the British Columbia Broiler Hatching Egg Commission (the “BCBHEC”) and British Columbia Egg Marketing Board (the “BCEMB”) include the above *NPMA* provision.

The lack of express authority in the marketing schemes for chicken and turkey that enable the boards to use retained levy proceeds “to pay costs and losses incurred in marketing a regulated product” is a gap and presents a risk of challenge to the two boards ability to respond financially to address the extraordinary costs of infected premise C&D. While the risk of challenge is considered low, the risk of successful challenge is high, particularly if the boards share in the industry-wide costs of infected premises C&D.

Fiscal Capacity

Irrespective of the regulatory authority “to pay costs and losses”, the boards and commission have established contingencies for unforeseen circumstances. The BCTMB has dedicated \$750,000 of their investments to their Internally Restricted Fund for self-insure to respond to future turkey disease outbreaks and their impact on the industry. The other boards and commission have not included such provisions or clarity with respect to their contingencies.

Financing the Extraordinary Cost of Infected Premise C&D

There are no existing programs in place to effectively address the extraordinary costs of infected premise C&D following a NAI discovery. There is no compensation payable under the *Health of Animals Act* (the “*HoA Act*”) for the cost to C&D infected premises. The industry has relied on ad hoc measures in the past to address these costs, from the poultry processors, boards and commission providing the funds in 2004 to the federal and provincial government providing up to 90% of the eligible extraordinary costs in 2014.

The federal and provincial governments stated following the 2014 HPNAI outbreak that they would not consider future industry requests for financial assistance under the AgriRecovery Program given the recurring nature of NAI in BC. The stated government position and the absence of a coordinated industry-wide financial response leave the infected premise owner with the responsibility and financial burden for the extraordinary costs of C&D.

The highly variable and unpredictable nature of NAI and resulting implications on infected premises C&D costs raises the level of anxiety of infected premise owners. The uncertainty with respect to whether or not financial support is available may or may not hamper the decision-making of the infected premises owner with respect to the initiation and completion of the C&D process.

Mandatory Biosecurity

The current BC on-farm biosecurity program serves to minimize the risk of incursion and spread of disease. Nineteen mandatory standards for poultry biosecurity have been in place since 2009. There are currently no Mandatory Biosecurity Standards for C&D of infected premises given that infected premises C&D given the CFIA lead responsibility and requirements.

² *NPMA* section 11 (1) (o) (iii).

Biosecurity standards are audited each year and a process of compliance and enforcement is in place for each of the boards and commission. The ultimate penalty for continued non-compliance with the mandatory standards is the revocation of the quota licence.

There are currently no Mandatory Biosecurity Standards for C&D of infected premises given that the responsible authority is CFIA.

Existing Government Programs

As previously stated under the Financing the Extraordinary Costs of Infected Premise C&D, there is no compensation payable for infected premises C&D under the *HoA Act*. As well, the federal and provincial governments have stated that future requests for AgriRecovery assistance will not be entertained. Of the remaining suite of government business risk management programs, only the AgriStability Program has potential for application. In order to expedite the infected C&D process, contracted services are used however, agricultural contract work and machinery lease/rental are not eligible program costs. The unpredictable nature of the program does not lend itself to facilitating the rapid initiation and completion of infected premise C&D needed to enable the boards and commission to return the poultry industry to a system of orderly marketing in a timely manner.

Options to Address the Gaps

Options have been developed to address the regulatory authority gap and financing the infected premise C&D gap. Each gap includes a description of the issue, followed by a description of the range of possible options for consideration, and a recommended option, including an assessment against the SAFETI principles.

No options are presented for addressing infected premises C&D protocols gaps as the analysis has determined that addressing this gap will have limited to nil effect on addressing the need for a predictable financial response to the extraordinary costs of infected premises C&D. The government program gap is addressed through the need to provide financial support for infected premises C&D. There are no apparent options for these two gaps that would improve timing of the boards' and commission's ability to return the poultry industry to a system of orderly marketing. The AgriRisk Initiative Administrative Capacity Building program can be explored to support the early years of developing a financial response.

Regulatory Authority

While all boards and commission have some degree of financial capacity to address the extraordinary costs of infected premises C&D, the BCCMB and BCTMB do not have the express authority to use retained levy proceeds "to pay costs and losses incurred in marketing a regulated product". The lack of express authority was identified in a November 2011 legal opinion provided to the BCTMB.

The lack of express authority leaves open the opportunity for challenge of a board decision to pay for the cost of infected premise C&D. While the risk of challenge is assumed to be low, the initiation of a challenge would serve to undermine the ability of the boards to respond in a timely manner to assist the industry as a whole to return to orderly marketing of product.

While infected premises are specific to a sector, the impact is felt by the entire poultry sector in BC. As the benefits of timely completion of the C&D are realized by the industry as a whole, the boards and commission must also take into consideration the need to pool their respective funds to share in the costs of industry-wide infected premises C&D. The pooling funds can also facilitate opportunities for further risk transfer mechanisms to lessen the overall cost burden on licenced producers through levies paid. The costs and benefits of such risk transfer mechanisms can be helpful in minimizing any increase in levies to put in place funding to cover infected premise C&D in the future.

1. Maintain the Status Quo – do not alter the regulatory authority.
Section 28 (t) of the British Columbia Turkey Marketing Scheme excludes section 11 (1) (o) (iii) of the *NPMA* as a power of the board.

Section 4.01 (p) of the British Columbia Chicken Marketing Scheme excludes section 11 (1) (o) (iii) of the *NPMA* as a power of the board.

The BCCMB and the BCTMB would not pursue amendments to their respective schemes to have section 11 (1) (o) (iii) of the *NPMA* included as a power of their boards.

In the event of a future NAI discovery and the BCCMB and BCTMB choose to pay for the cost of infected premise C&D, they must demonstrate that they have fully assessed the risk of challenge pertaining to the lack of express authority along with their ability to return the industry as a whole to a system of orderly marketing in a timely manner. The risk of challenge could become more acute in the event that the poultry boards and commission agree to share any future cost or transfer the risk of infected premise C&D.

2. Request amendment to the British Columbia Chicken Marketing Scheme and British Columbia Turkey Marketing Scheme to include the powers of the *NPMA* section 11 (1) (o) (iii) to make clear the authority.

Amend Section 28 (t) of the British Columbia Turkey Marketing Scheme to add section 11 (1) (o) (iii) of the *NPMA* as a power of the board.

Amend Section 4.01 (p) of the British Columbia Chicken Marketing Scheme to add section 11 (1) (o) (iii) of the *NPMA* as a power of the board.

Requesting an amendment and the subsequent incorporation of the additional powers under the BCCMB and BCTMB marketing schemes would confirm the express authority of all poultry boards in addressing the cost of infected premise C&D and the timely recovery and resumption of the system of orderly marketing of poultry product in BC and limit the risk of successful challenge.

It could be argued that the inclusion of the provision to use levies to “pay costs and losses” could be used by the boards for purposes that extend beyond the costs and losses relating to infected premise C&D. While valid, the provision currently exists in the BCBHEC and BCEMB regulations and has not resulted in any identified problems.

Amending the regulation of the BCCMB and BCTMB would eliminate any ambiguity resulting from past legal opinions as to the express authority of the boards with respect to the use of levies to “pay for costs and losses”.

Recommendation

Option 2 - The BCCMB and BCTMB should explore and consider an amendment to their respective schemes for the inclusion of *NPMA* powers under section 11 (1) (o) (iii).

A challenge resulting from the lack of board authority to “pay cost and losses” would be after payment has been made and would not directly impact the return to a system of orderly marketing in the short term. A successful challenge would however require future amendments to the marketing schemes to make explicit the express authority going forward in the event that the board chooses to continue to “pay costs and losses” relating to infected premises C&D for subsequent NAI discoveries.

Risk sharing and transfer options would add to the need for the BCCMB and BCTMB to amend their respective schemes. The direct payment to a producer within the scheme by the board or commission for “costs and losses” may be viewed by producers more favourably and differently than the payment to a producer in another marketing scheme through a risk sharing and risk transfer based approach.

Strategic Considerations – The ability to return to the poultry industry to a system of orderly marketing as soon as possible in recovery from a NAI discovery is paramount. The failure to have in place a policy that addresses the extraordinary cost of infected premise C&D adversely affects the ability for prompt and timely recovery.

The federal and provincial governments have stated that financial support through AgriRecovery will not be entertained for future NAI discoveries. The two levels of government have and continue to support the identification and implementation of industry-led solutions to address financial gaps resulting from a NAI.

This option minimizes the risk of potential challenge of express authority of the two boards to “pay costs and losses” for C&D through the use of grower levies. The risk of challenge may be low however amending the scheme to provide the express authority would virtually eliminate the potential for challenge and facilitate the development of risk sharing and risk transfer mechanisms to minimize future levy increases to cover infected premise C&D costs.

Accountability Considerations – Acting in response to a NAI outbreak to cover C&D costs of infected premises without the express authority exposes the BCCMB and the BCTMB to the risk of challenge through appeal, particularly in light of past legal opinions on this matter.

While the intent of the action may be in the best interest of returning the industry to a system of orderly marketing, the BCCMB and BCTMB would remain at risk of being held to account for not acting within the express authorities granted under their respective marketing schemes, particularly if the levies used to fund contingencies is pooled to share in the industry-wide costs of infected premises C&D.

Fairness Considerations – The infected premise in one poultry sector impacts all poultry operations within 3 km. All sectors are unable to restock until the C&D is completed for the infected premise. While addressing the extraordinary costs of C&D will hasten the return to a system of orderly marketing, the lack of express authority leaves the door open to challenge a decision to use levy proceeds to pay for the costs associated with infected premises C&D. Amending the schemes can only serve to lessen this risk.

The BCCMB and BCTMB could seek BC FIRB prior approval of any intent to “pay costs and losses” for C&D through the use of grower levies, however, past legal opinion suggests that express authority does not exist and is beyond BC FIRB authority to grant approval.

Effectiveness Considerations – While the boards may be acting with the best interests of the industry in promptly returning to a system of orderly marketing, the lack of express authority could lead to an administrative fairness argument being submitted to BC FIRB. In the case of chicken and turkey, while the risk of challenge may be low, the potential for successful challenge based on the lack of express authority is high.

Transparency Considerations – Operating outside of the express authority of the regulations put the BCCMB and BCTMB at jeopardy with respect to paying infected premises C&D costs. The initiation of any such action must be with full disclosure of the rationale for the action and any limitations to or perceived lack of authority. It will be important for the BCCMB and BCTMB to make clear to growers that the express authority is not granted in their respective regulations to pay for such costs and losses.

Inclusiveness Considerations – It will be important for the BCCMB and the BCTMB to make clear to the entire poultry value chain that the express authority is not granted in their respective regulations to pay for costs and losses.

Financing the Extraordinary Cost of Infected Premises C&D

The C&D requirements are premise-specific and as such the range in cost to undertake the C&D is extremely variable. The typical costs involved in the C&D of infected premises include:

- BHT (organic material) removal
- Extraordinary labour – for the organic material removal, dry and wet cleaning
- Equipment rental
- Pressure washing
- Miscellaneous supplies
- Extraordinary management

The *HoA Act* does not compensate for the cost of infected premises C&D and clearly places the responsibility for those costs on the owner of the premise. Ad hoc responses have been used for past NAI events. Processors, boards, commission and federal and provincial governments have provided financial support to cover most of all of the extraordinary cost of infected premise C&D following an NAI discovery in the past. The federal and provincial government have stated that they would not support a future industry request for support via the AgriRecovery Program.

Past experience has identified that the range of costs to C&D and infected premise is highly variable; from \$1 to \$5 per bird. The inability to predict the cost of C&D raises the level of anxiety of infected premise owners. The uncertainty with respect to whether or not additional financial support is available may or may not hamper decision-making in proceeding with the timely initiation of C&D activities.

The impacts and effect of hesitation by the infected premise owner to initiate C&D activities is not limited to the infected premise; all poultry farms located within 3 km of the infected premise are affected. All poultry farms within the 3 km zone remain subject to testing and movement controls and may not commence restocking until 21 days following the C&D of the “infected premise” being approved by CFIA.

To further illustrate; while the Infected Zone is 3 km from the index premise, data on poultry operations within 1 km of the 11 commercial infected premises in 2014 was compiled. There were 29 non-infected premise farms with 47 separate flocks within 1 km of the 11 index premises with a total allocation of 944,000 birds. Broken down by production type:

- Broilers 18
- Breeders 3
- Breeder pullet 1
- Layers 5
- Turkeys 2

Half of the affected operations were able to place their next flock as scheduled. The other half, mostly broiler operations were able to make alternate placement arrangements. While the quota leasing arrangements provide opportunity to maintain orderly marketing for some, it is not a policy that is applicable to the broiler hatching egg sector.

Based on their assessment of the behaviour of the virus in 2014, CFIA modified their standard protocol for addressing a HPNAI discovery to “stamp out” any poultry premise within 1 kilometer of the index premise. Had CFIA invoked the stamp out protocol, the cost of C&D of infected premises would have tripled given the additional 29 premises within the 1 kilometer zone.

There is no simple solution to addressing the C&D of infected premises for the BC poultry industry. The industry is concentrated in the Fraser Valley with no geographical segregation of production types. As well, there are a number of licenced producers holding quota in more than one sector. The CFIA’S Notifiable Avian Influenza Hazard Specific Plan requires the identification and potential ordered destruction of flocks on premises that have significant epidemiological contact with the known infected premise. In other words, a producer with a broiler, layer and turkey operation and staff moving between the three operations would likely be viewed as a “significant epidemiological contact” and could result in the ordered destruction and need for infected premise level C&D.

The unpredictable nature of NAI makes it impossible to establish the cost of infected premise C&D. A 2013 actuarial assessment done for the BC regulated poultry industry reported on the cost of a range of scenarios to cover for losses for the gap in market value, infected premises C&D and limited business interruption policies. The expected average annual loss was established at \$265,136. The one in five year probability of an NAI discovery established the total cost at \$432,000. The one in 10 year loss scenario established the total cost at just under \$950,000. A catastrophic loss scenario that would resemble the 2004 HPAI outbreak would have a cost ranging from \$11.7 million to \$14.7 million. The C&D component represents approximately 25 per cent of the total loss, as such, the range of infected premise C&D cost are estimated at \$66,000 (annual average loss) to \$3.7 million (catastrophic loss).

Options

1. Infected Premise Owner Responsible for the full cost

The responsibility for planning, initiating and completing the infected premise C&D rests with the owner of the infected premise as does full financial responsibility for the extraordinary costs.

The infected premise owner may be eligible to receive some financial support after the fact through the use of the AgriStability Program, however, there is no certainty with respect to how much, if any funding is paid.

The boards and commission would not use levy proceeds to support the infected premise owner.

The ability of the boards and commission to influence the timely return to a system of orderly marketing is placed in jeopardy.

2. Boards and Commission Reimburse the Infected Premise Owner

The BCBHEC, BCCMB and BCEMB would establish a policy and dedicate a specified portion of contingency funds for self-insurance similar to the BCTMB to provide coverage for the extraordinary costs of C&D to producers within their respective schemes.

The option would provide the infected premise owner with greater confidence that the extraordinary cost of C&D would be covered by their respective board or commission.

The ability to cover the costs by a board or commission may be limited to funds on account. In the event of an extreme outbreak, the costs of infected premises C&D may exceed funds on account.

The ability of the boards and commission to influence the timely return to a system of orderly marketing is enhanced.

3. Boards and Commission Pool Funds to Compensate the Infected Premise Owner

Subject to establishing and affirming authorities, the boards and commission would contribute to a funding pool to cover industry-wide infected premises C&D.

As the benefits of timely C&D of infected premises are shared by the entire poultry industry it is in the interests of all sectors share the cost of infected premise C&D irrespective of the sector of the index premise.

Any potential shortfalls in available funding of any one or more of the boards and commission in the event of an extreme outbreak are virtually eliminated.

The ability to utilize risk transfer mechanisms is enhanced.

The ability of the boards and commission to influence the timely return to a system of orderly marketing is optimized.

Recommendation

Option 3 - The poultry boards and commission to undertake the necessary measures to pool funds dedicated to addressing the costs and losses incurred in marketing a regulated product in the event of a NAI discovery and continue to explore and develop options for risk transfer.

Strategic Considerations – The recommended option is consistent with the strategic intent to address the lack of a dedicated fund to cover the extraordinary cost of infected premise C&D in the recovery from a NAI discovery and return industry to a system of orderly marketing in as short of time possible. Delays in returning to a system of orderly marketing are costly and damaging to the entire poultry value chain. Maintaining the status quo does not provide the confidence and assurances necessary to incent the appropriate behaviour of infected premise operators to ensure the prompt initiation and completion of C&D requirements.

Creating a pooled fund enables the industry to examine risk transfer mechanisms that may address concerns related to increasing levies to provide the requisite funds or to replenish the fund after a NAI discovery.

Accountability Considerations – The recommended option places responsibility on the boards and commission to assume the cost of infected premise C&D. Assuming the responsibility also improves the ability of the boards and commission to return the industry to a system of orderly marketing in a timely manner.

The responsibility for the cost of infected premise C&D is shared on an industry-wide basis. The benefits of timely completion of C&D benefit more than just the infected premise owner, while poultry operations within 3 km of the infected premise directly benefits from the ability to restock, the industry as a whole benefit from the timely return to a system of orderly marketing.

All licenced producers sharing the costs may lead to more rigorous attention to on-farm biosecurity practices.

Fairness Considerations – A NAI incursion can occur on any poultry operation. While the likelihood of detection on a broiler operation is low, the broiler operation can be precluded from restocking by being located within 3 km of an infected premise. As well, if the infected premise is a HPNAI and the CFIA invokes its “stamp out” order which would result in all poultry premises within 1 km of the infected premise being ordered destroyed, the infected C&D protocols apply. Given the potential impact and the benefit of prompt C&D, broiler operations can minimize the time to return to production. This broader benefit warrants all licenced producers sharing in the cost of infected premise C&D.

Effectiveness Considerations – If financial assistance is not pooled, the effectiveness of response is limited to the available capital within the board or commission’s contingency fund. Provisions would need to be established to address the potential for a situation where funds required exceed the contingency fund balance. Pooling of funds can facilitate the investigation of potential cost reduction/saving risk transfer mechanisms. Mechanisms to minimize moral hazard or inflated pricing by contractors will need to be addressed to realize optimum effectiveness of the program.

Transparency Considerations – Pooling of funds will require the boards and commission to establish and make public any formulas on how each sector’s contribution will be determined. As well, licenced producers will need to be advised as to whether the funding for the infected premise fund will be sourced from annual surplus levy proceeds or by way of additional levy and if so, how much the added levy will be. Clear guidelines and parameters on what activities are eligible and how much is eligible for infected premise C&D.

Inclusiveness Considerations – Establishing a pool enables all producers to receive due consideration for the extraordinary costs of C&D. Utilizing annual surplus levy proceeds as opposed to an added levy will minimize the impact on pricing of product. This reduces possible stakeholder concern regarding the passing on of the costs further along the supply chain.

Conclusions

The federal and provincial government have stated that a request for AgriRecovery assistance for a future NAI discovery would not be considered as the recurring nature of NAI in BC was not consistent with the policy objectives of the program. The federal and provincial governments have strongly supported the BC poultry industry to examine alternate, industry-led mechanisms to address the financial needs in response to future NAI discoveries.

With Phase 1 having concluded that the primary gap was not having a program in place to address the extraordinary costs of infected premise C&D, the Phase 2 report focussed on assessing the existing financial and policy supports available, identifying gaps and recommending options to address the gaps.

To enable the timely return to a system of orderly marketing, the poultry boards and commission will need to address the gap created by the federal and provincial government policy position to not support future use of AgriRecovery to cover the extraordinary costs of infected premise C&D. The poultry boards and commission have contingency funds available that could be directed to compensating for the extraordinary costs of infected premises C&D.

While contingency funds exist, only the BCTMB has specified a commitment to the use of contingencies to self-insure to provide a contingency in the event of future turkey disease outbreaks. Further, the BCCMB and BCTMB regulatory authority is not explicit to the extent of those for the BCBHEC and BCEMB in the ability to use levy funds to “pay for costs and losses incurred in marketing a regulated product”. While the risk of challenge of the lack of express authority has been assessed to be low, the potential for a successful challenge is high, particularly for the broiler and turkey industries.

The ability of contingency funds to address the gap is limited due to the highly unpredictable nature of NAI. As demonstrated by past events, there had been no prior discovery to the 2004 HPAI outbreak. Since 2004, there have been 3 subsequent discoveries in BC which has resulted in a shift in view that recognizes NAI as an on-going risk to be actively monitored and managed. In the event of back to back NAI discoveries and the severity of the outbreak, current contingencies could easily be depleted, requiring them to be replenished during a time of recovery and limited returns. Mechanisms to transfer the risk need to be explored.

Recommendation

The Review has identified that a timely return to a system of orderly marketing following a NAI discovery requires a predictable financial response, for the extraordinary costs of infected premise C&D in particular. While the boards and commission have in place contingency funds to cover the costs as necessary, there remains a gap in regulatory authority and predictable financial response.

Board and commission decisions are required to provide policy direction prior to moving to Phase 3 of the Review. More specifically, decisions are being sought on whether or not the boards and commission

1. Support the arguments put forth that it is in the interests of sound marketing policy to intervene and commit financial support to off-set the extraordinary costs of infected premises C&D.
2. Agree that all licenced poultry producers realize the benefits of the boards and commission assuming the extraordinary costs of infected premises C&D and as a result further examine mechanisms to be put in place for all producers to share in covering the costs through seeding and maintaining a collective fund.
3. Support the continued exploration and analysis of the benefits and costs of risk transfer mechanisms that may or may not lead to mandatory insurance requirements.
4. Agree that the BCCMB and the BCTMB consider amending their respective schemes to ensure the express authority to use levy proceeds “to pay cost and losses incurred in marketing a regulated product” is included.

Should the boards and commission affirm the above decisions, Phase 3 and Phase 4 of the Review should commence immediately. These phases will assess whether or not the conditions of insurance exist for covering the extraordinary costs of C&D in a more cost effective manner than through the use of contingency funds as well as whether viable insurance mechanisms to provide such coverage exist. The completion of Phase 3 and Phase 4 will provide a more complete analysis to enable the boards and commission to seek poultry industry input on whether or not to require producers to maintain insurance against losses resulting from NAI discoveries through the inclusion of the authorities granted under the NPMA in their respective marketing schemes.