



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Adventure Activities – keeping it safe

CONSULTATION DOCUMENT





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

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Minister's foreword

Kia ora koutou,

On 9 December 2019, Whakaari/White Island erupted while several adventure activity tour groups were present on the island. The tragedy left 22 people dead, and 25 people with serious life-long injuries.

Following this devastating event, our Government committed to reviewing what happened and addressing any weaknesses in the adventure activities regulatory regime. The Minister of Local Government is leading the group of Ministers responsible for matters relating to the economic and social recovery following the Whakaari/White Island tragedy. As part of this cross-government approach, the Ministry of Business, Innovation and Employment was directed to review how we regulate safety in adventure activities in New Zealand.

The review found that while the adventure activities regulatory regime was performing reasonably well, there were areas which could be strengthened in relation to the management of natural hazards, the audit process, and the role of the regulator. Following these findings, I directed the Ministry to look at ways to strengthen the regime in each of these areas, to try to reduce the risk of these tragedies occurring.

Adventure activities are an important part of New Zealand's tourism and recreation environment. Before COVID-19, as many as one in three international tourists to New Zealand took part in at least one adventure activity. Adventure activities are also an important way in which many New Zealanders access the outdoors, explore the natural environment and stay healthy, fit and connected.

Everyone taking part in these activities deserves to know their safety is being managed well.

The targeted review took place in 2020, and found that the regime has largely worked effectively since it was introduced in 2014. However, there were a number of weaknesses in the regime in relation to the management of natural hazards, the role of the regulator and the audit process.

We think we can do better. This consultation document sets out a package of change proposals to the adventure activities regime to strengthen these areas.

This consultation is an opportunity to have your say about the issues you see in the adventure activities system and whether you think these proposals will help continue improving safety.

To develop effective policies we need to hear from as many people as possible, including adventure activity operators, people who take part in activities and others with an interest in the sector. I encourage all of you to give feedback on the options in this paper.

Consultation closes at 5pm on Friday 5 November 2021. I look forward to hearing your views, and thank you for taking the time to contribute to this vital piece of work.

Hon. Michael Wood

Minister for Workplace Relations and Safety

How to have your say

We want to know what options you think will help continue to improve safety for participants and workers in adventure activities.

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) is seeking written submissions on the issues raised in this document by 5pm on Friday 5 November 2021.

This document includes a number of questions to guide submissions. Your submission may respond to any or all of these questions. We also encourage your input on any other relevant issues.

Please include your name and (if applicable) the name of your organisation in your submission. Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By using the online form
- By sending your submission as a Microsoft Word document to HSWregs@mbie.govt.nz.
- By mailing your submission to:

Health and Safety Policy Team
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

If you have any questions about the submissions process please direct these to HSWregs@mbie.govt.nz.

Use and sharing of information

We will use the information you provide in submissions to inform MBIE's policy development process, and to inform advice to Government about health and safety at work regulatory reform. We may contact you directly if we require clarification of any matters you raise.

Submissions remain subject to requests under the Official Information Act 1982. Please clearly indicate in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

The Privacy Act 1993 applies to submissions. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Why is the government consulting on the adventure activities system?

On 9 December 2019 Whakaari/White Island erupted. Forty-seven people were present on the island as part of guided tours. The eruption resulted in 22 people being killed and 25 left with serious injuries.

As part of the response to this tragedy, the Minister for Workplace Relations and Safety directed the Ministry of Business, Innovation and Employment (MBIE) to undertake a targeted review of the adventure activities regulatory regime. This examined whether weaknesses existed in the adventure activities regime where activities took place in naturally hazardous environments. The targeted review found a number of weaknesses in the regime in relation to the management of natural hazards, the audit process and the role of the regulator.

Following the targeted review, the Minister for Workplace Relations and Safety instructed MBIE to begin a second stage of work to develop proposals to strengthen the regime in these areas.

Some of the proposed changes to the regulations will not change the law, but will make it explicit about what is required of various participants in the adventure activities sector. For example, operator duties to manage natural hazards. Other proposals such as the risk classification system and risk disclosures will expand on the current law.

Read the Targeted Review [here](#).

What is this consultation about?

We want to hear your views about the proposals to address some of the issues found by the targeted review and to improve the adventure activities regime more generally. Particular areas of focus include:

- strengthening requirements for how operators, landowners and the regulator manage natural hazard risks
- improving how risk is monitored, assessed and communicated
- strengthening WorkSafe’s regulatory leadership role
- improving the safety audit standard, audit process and guidance and information for the sector.

Out of scope for this review are questions about the basic design of the adventure activities system, such as:

- what is an “adventure activity” that needs to be registered
- the role of independent auditors to check operator’s safety management systems
- whether safety in adventure activities should be regulated under the Health and Safety at Work system

We recognise these issues need further discussion. However, we want to keep the scope of this consultation limited to areas we think immediate improvements can be made. MBIE intend to begin a **first principles review** of the regulations beginning in 2026 to discuss these broader system design issues.

What do we want these proposals to do?

Our goal is to **reduce harm** in the adventure activities sector. We want to reduce the number of injuries and deaths that occur in adventure activities.

Adventure activities also often have a risk of **catastrophic harm**, where if an incident occurs it can result in a number of deaths or serious injuries. While it is unlikely we will be able to eliminate these risks entirely, we want to reduce how often catastrophic harm events occur.

We also want to ensure as far as possible changes are made in a way that will avoid having a chilling effect on the adventure activities sector or unnecessarily restricting public access to outdoors and recreation activities.

Introduction from the Expert Reference Group

Kia ora koutou,

Adventure activities are an iconic part of New Zealand's tourism and recreation offering. These outdoor 'adrenalin' activities are a way in which New Zealanders and our international visitors enjoy the natural environment, challenging ourselves and seeking new experiences.

Everyone taking part in these diverse activities deserves to know their safety is being managed well. This is why the adventure activities regulatory regime is important.

The regime has largely worked effectively since it was introduced in 2016. However, following the Whakaari/White Island tragedy in December 2019, a review found a number of weaknesses in the regime in relation to the management of natural hazards, the audit process, and the role of the regulator. The Minister for Workplace Relations and Safety directed the Ministry of Business, Innovation & Employment to look at strengthening the regime in each of these areas.

To help develop the proposals discussed in this document, MBIE convened an Expert Reference Group. This group brought together lead industry bodies, academics and government experts to discuss how we can shape the adventure activities system to continue driving improvements in safety in the sector.

Our role as the expert reference group was to provide the Ministry with independent advice about what issues were arising in the adventure activities regime. We advised on what the goals of any changes should be, and provided feedback to help the Ministry refine its proposed changes into the package presented here.

We think the package of proposals MBIE is now putting forward in this consultation provide a good starting point for discussion about changes we may want to make. Nothing has yet been decided and there are some ideas in this document that will be challenged in submissions from our own organisations. However, what is being offered is a range of options for how we can improve the regulatory system and better support adventure activity operators to manage safety.

This consultation now offers an opportunity for adventure activities operators, participants and others to have their say. We look forward to seeing this public discussion and continuing to work with MBIE and the Minister on any changes to the regime.

Chris Roberts
Chair, Expert Reference Group
(Tourism Industry Aotearoa)

Andrew Leslie
Deputy Chair, Expert Reference Group
(Recreation Aotearoa)

Glossary of Terms

General Terms

Adventure activity	<p>Adventure activities are guided recreational or educational activities, paid for by a participant, which deliberately expose the participant to some form of potential serious risk the operator must manage.</p> <p>For the full definition see regulation 4 of the Adventure Activities Regulations</p>
Adventure Activities regulatory regime	<p>The system through which we regulate adventure activities. This includes legislation like the Adventure Activities Regulations, supporting materials such as the safety audit standard and guidance materials, and the way organisations like WorkSafe are applying and supporting this regime.</p>
Natural hazard	<p>Physical, quick-onset natural events with a degree of localised impact with the potential to cause fatalities. These include, for example, extreme weather, water surges, rockfalls and landslides, and volcanic eruptions.</p>
Natural hazard risk	<p>Natural hazard risk is determined by how likely a natural hazard event is to occur, how well it can be predicted, and the level of harm that could result.</p>
PCBU	<p>A person conducting a business or undertaking. A PCBU can either be a legal person such as a company, or an individual. PCBUs are one of the main parties with obligations under the Health and Safety at Work Act 2015.</p> <p>For further definition, see section 17 of the Health and Safety at Work Act 2015.</p>
Reasonably practicable	<p>Doing what the business or undertaking is reasonably able to do to ensure health and safety, taking into account matters like the likelihood of harm occurring, the degree of harm that may result, and the availability of ways to eliminate or minimise the risk.</p> <p>For the full definition, see Section 22, Health and Safety at Work Act 2015</p>

Instruments in the system

Adventure Activities Regulations	Health and Safety at Work (Adventure Activities) Regulations 2016
HSW Act	Health and Safety at Work Act 2015
Safety Audit Standard	<p>The standard published by WorkSafe that sets requirements operators must meet to pass their safety audit and be registered as an adventure activities operator. The standard is available here.</p>
Targeted Review	<p>MBIE's 2020 review examining whether there are unintended weaknesses in the adventure activities regime. You can find the review report here.</p>

Part One: Background to this consultation

1. Background to the adventure activities regime

The adventure activities sector

The adventure activities sector ranges from 300 to 330 operators offering more than 60 different types of adventure activities.¹ 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. Business expertise across the sector is mixed and profit margins are tight, with operators frequently expressing concerns about the costs of audits.² A number of registered operators are charitable or not-for-profit businesses.

The sector is divided roughly equally between commercial tourism operators offering adventure activities mainly 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 and Recreation Aotearoa. However, only around half of registered operators are members of one of these groups.

How are adventure activities regulated?

Safety in the adventure activities sector is mainly regulated through the *Health and Safety at Work Act 2015* (the HSW Act) and the *Health and Safety at Work (Adventure Activities) Regulations 2016*.

Like all businesses, adventure activity operators are subject to the requirements of the HSW Act. The HSW Act provides general health and safety obligations for all people conducting a business or undertaking in New Zealand. The core principle of the HSW Act is that workers and other people should be given the highest level of protection against harm to their health, safety and welfare as is reasonably practicable.

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 the safety of their workers or other persons at risk. 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.

¹ The precise number of registered operators varies over time as operations are created or disestablished.

² In 2016, WorkSafe commissioned a performance study of the Adventure Activities Certification Scheme (available at [worksafe.govt.nz/topic-and-industry/adventure-activities/documents-and-resources/](https://www.worksafe.govt.nz/topic-and-industry/adventure-activities/documents-and-resources/)). This report found that the cost of an audit was \$1300-1800 per auditor per day of audit activity. Early discussions with stakeholders suggests the average cost of a full audit is around \$5000.

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, found [here](#). The safety audit standard sets out the requirements for how operators should deliver adventure activities and what needs to be included in their safety management policies and processes. Auditors both conduct full audits of operators at least once every three years and monitor the performance of operators between audits to ensure they continue to meet safety standards.³

For an auditing body to conduct adventure activity safety audits they must be recognised by WorkSafe. WorkSafe uses whether an audit organisation has JAS-ANZ⁴ accreditation as the main way to decide whether an auditing body has the appropriate expertise and systems to be recognised as an adventure activity safety auditor. JAS-ANZ assesses and accredits auditing bodies against the New Zealand Adventure Activity Certification Scheme, 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.

Guidance materials, such as the SupportAdventure website,⁵ support operators to understand what their responsibilities are and how they can meet them. In particular, the Activity Safety Guidelines provided detailed guidance for how safety should be managed in particular activities.

³ 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 requirements. Monitoring generally occurs once a year.

⁴ The Joint Accreditation System of Australia and New Zealand

⁵ <https://www.supportadventure.co.nz/>

2. Our principles for regulating adventure activities

Universal accident compensation means we need regulations for adventure activities in New Zealand

New Zealand is relatively unusual among most countries we compare ourselves with, in that we have specific regulations requiring operators to register their adventure activities operations.⁶

A key reason for this is that New Zealand has universal accident compensation provided by ACC. This means that operators do not have the same liability for personal injuries to customers under contract and negligence laws as in many other countries. Having insurance for personal injury law suits is also less important for New Zealand operators. This means, unlike in many other countries, adventure activity operators do not always have their safety systems as comprehensively reviewed by insurance providers as part of getting insurance cover.

The more limited liability on operators for personal injury is one of the reasons we have seen widespread development of adventure activities in New Zealand. However, the reduced accountability directly to customers and smaller role of insurance means we need Government regulation, both to provide a check that operators have good safety systems in place and to ensure operators can be held accountable if activities are not provided safely.

We expect a higher standard of care in adventure activities than in personal recreation

By requiring adventure activity operators to meet both work health and safety requirements and adventure activities regulations, the Government is expecting operators to manage risks to a higher level than we expect of individuals taking part in personal recreation activities. This may mean, for example, there are some hazardous areas individuals are able to access that adventure activity operators cannot, or certain activities operators cannot provide, because risks cannot be managed to an appropriate level for adventure activities.

Expecting a higher standard of care for operator-led adventure activities seems appropriate. Participants in adventure activities place high reliance on operators to tell them activities are safe and to assist them to keep themselves safe, rather than relying on their own judgement and skills as for personal recreation.

It is beyond the scope of this review to consider the safety of individuals taking part in their own adventure activities, without an operator.

⁶ The United Kingdom has a licensing system for adventure activities, but this generally only applies to operators providing activities to young people. The UK licensing system is also 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.

Keeping risks acceptable

Adventure activities inherently carry some level of risk. The Adventure Activities Regulations recognise that by definition these activities will expose participants to dangerous terrain or waters, or will expose participants to serious risks if the operator's management systems fail (such as if equipment is not properly checked for safety).⁷

The key question for regulation is how we allow activities to proceed with some level of risk, while ensuring risks remain at acceptable levels.

What is an acceptable level of risk?

Different standards for acceptable risk apply in different situations. What is acceptable will be influenced by factors like who is being exposed to the risk, whether these people were fully aware of and chose to run the risk, and what the benefits are.

In some situations, acceptable risk is decided according to a set calculation. For instance, some public health decisions (such as decisions on vaccines) consider risks to be acceptable where there is a less than one in one million chance of serious harm occurring. Similarly, some public safety decisions (such as allowing public access to hazardous areas) consider risks to be acceptable where there is a less than one in one hundred thousand chance of serious harm.

We are not proposing settling on an exact calculation for what is acceptable risk in the adventure activities sector through this consultation process. However, we do need to work out what controls should be in place so that risks in adventure activities are kept at a level we, as society generally, consider to be acceptable.

Adventure activities are different from most traditional workplaces

As noted in chapter 1, the health and safety at work system provides requirements for how risks must be managed in adventure activities.

Under the HSW Act, all persons conducting a business or undertaking (PCBUs) have a primary duty to ensure, so far as is reasonably practicable, their work does not create risks to the health and safety of any person.

This duty requires all PCBUs to take steps to identify risks that may arise in or from their work and consider what they can reasonably do to eliminate, or else minimise these risks.

The concept of "PCBU" under the HSW Act is broad. Whether or not a particular party is a PCBU will depend on the circumstances of each case, but in the adventure activities context and depending on the facts, it will generally include adventure activity operators (whether or not they are operating for profit), landowners who grant permission for operators to use their land, and third-party providers such as tour companies.

⁷ See Health and Safety at Work (Adventure Activities) Regulations 2016, reg. 4 (1) (vi).

However, risks in adventure activities are different from many traditional work activities

Risks in adventure activities differ from the risks faced in traditional workplaces (like offices, warehouses or construction sites) in several key ways.

In particular, risks in adventure activities are more dynamic. Risks often arise from conditions beyond an operator's control, such as the weather, and can change quickly. Operators and their frontline staff need to be skilled in continually assessing risk levels and being able to respond quickly to changes.

Adventure activities are also different in that the people most exposed to risk will be customers, rather than workers. Customers have less opportunity to learn about risks and engage with the business about how these are managed than most workers, suggesting a higher standard of care should be expected of operators.

We determine how risky an activity is by considering **how likely a hazard event is** to occur, **how well we can predict** when it will occur, and **the level of harm** that could result. Based on these factors, adventure activities, particularly those involving significant natural hazards, will generally have a high level of risk compared to traditional workplaces.

Because of these differences, we have sector-specific regulations for adventure activities

In recognition of the different risks we have sector-specific requirements created through the Adventure Activities Regulations.

Currently, the main extra requirement for adventure activities created by these regulations is for adventure activity operators to pass an audit of their safety systems, and register their operation with WorkSafe.

This registration requirement is supported by the safety audit standard, which provides details about the type of safety policies and processes operators must have in place to pass their safety audit. It is also supported by guidance materials, which explain to operators and others what their obligations are and what is good practice for managing safety.

We think there is an opportunity to expand on - or make more explicit - general duties, and set risk and industry specific requirements in the Adventure Activities Regulations beyond the registration process to continue to improve safety standards. Our proposals for change are discussed in the following chapters.

There are a number of tools in the adventure activities system that can be changed to improve safety standards

- **We can change regulations** to expand on or make more explicit, general duties and set risk and industry-specific requirements that all operators, landowners or others involved in adventure activities must follow. We generally consider being explicit in the regulations is useful where we think all parties should be following the same approach towards managing an issue.
- **We can change the safety audit standard** to set what policies and processes all operators must have in place to pass a safety audit. Changes to the audit standard can be used to set more detailed requirements than in regulations, for instance, detailing each of the steps we expect to be in an operator's safety management systems.
- **We can adjust the audit process** to set how auditors check operators against the audit standard. This includes both how they conduct their audits, and how they monitor operators between full audits to check they are continuing to meet safety standards. We can make adjustments to the audit process through changing the Adventure Activity Certification Scheme.
- **We can change or add to guidance** to provide more tools to operators to help them understand how they can meet their responsibilities, and spread information about how to manage safety well. Guidance is useful where we think more information will help support operators to manage safety well, but we do not want to make a particular way of doing things compulsory for everyone. We have heard guidance materials like the Activity Safety Guidelines are often among the most useful tools for operators and auditors to check if an activity is managing safety well.

As well as deciding what changes we want to make to the regulatory system, we also need to decide which of these tools will work best to produce the changes we want.

Many of the proposals we make in this document would involve changes to more than one of these tools. For instance, any changes to regulations will likely be supported by changes to the audit standard, the audit process and guidance materials.

Different government agencies are responsible for each of these tools. MBIE is responsible for setting the Adventure Activities Regulations. WorkSafe has the main responsibility for developing the safety audit standard, producing guidance materials (either itself or with industry groups) and adjusting the certification scheme (in partnership with JAS-ANZ).

3. The case for change

There are three main areas where improvements can be made to the adventure activities regime. The proposals presented in following chapters are targeted towards strengthening the system in each of these areas.

We need to strengthen the way we manage risks from natural hazards

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

A significant part of the harm that occurs in adventure activities comes from natural hazards. Between November 2014 (when the Adventure Activities Regulations took effect) and December 2019 there were 32 fatalities in the adventure activities sector.⁸ This includes the 22 deaths from the 2019 Whakaari eruption. Of these 32 deaths, 26 resulted from natural hazard events.

Since the Adventure Activities Regulations took effect in 2014, we have seen improvements in the way many risks are being managed in the sector. However, the rate of harm from natural hazards continues to remain significant.

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

Natural hazards also present the main risk of catastrophic events (single incidents that 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. Each of these events causes on average eight fatalities and seven serious injuries.

While it is not realistic to completely eliminate natural hazard risks in adventure activities, we think we can improve the system to reduce the level of risk and associated harm.

The targeted review suggested that operators' understanding and management of natural hazards is inconsistent. While many operators manage risks well, across the sector there is some variation in how well these hazards are understood and managed. Operators also do not always have access to good information about how to manage natural hazard risks that are complex and difficult to predict.

The targeted review advised that the regulatory regime needed to put greater emphasis on supporting operators to manage natural hazard risks well. Better communication of risks from natural hazards to staff and customers, and clearer responsibilities for managers to cancel activities where risks are higher than normal, were also suggested as areas for improvement.

⁸ Data on serious harm, other than fatalities, in the sector is limited. Because of this, we have adopted fatality data as the best available representation of serious harm in the sector.

How we can improve the management of natural hazards is an issue also being considered by other areas of government. For example, the Department of Conservation, with input from GNS, has undertaken extensive work to create methodology for assessing a range of natural hazard risks. Part of this work has been developing thresholds for what is acceptable risk on limited Department of Conservation visitor sites. Government agencies also work together to minimise the risk and impact of natural hazards for New Zealanders more generally.

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

The current approach to monitoring and assessing risks in the sector is not providing a good understanding of actual risk levels

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 regulatory definition of an “adventure activity” are required to go through the same registration and auditing process.

The registration and auditing process provides limited information to WorkSafe about operators or groups of operators that are particularly high risk within the sector. The information operators are required to provide to WorkSafe for registration is limited to details like the activities they offer and their location, which is of limited use in understanding the level of risk faced by participants and workers.

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 resources to where they can do the most good.

Linked to this, we have also heard there can be issues with how risk levels are communicated by some operators. We have heard some participants feel they are not always fully informed about the risks of the adventure activities they are taking part in. Similarly, third party providers (such as tour companies) may at times have difficulty getting the information they need to fully understand and communicate the risks involved in an activity to potential customers.

We want to support WorkSafe to take a stronger role regulating the sector

For the adventure activities regime to work well, it needs to be supported by a strong regulator. WorkSafe is required to monitor and administer the regime, provide guidance and support to operators, and enforce requirements where necessary.

Before 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 2016.⁹

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.¹⁰

The adventure activities sector was considered a low priority for WorkSafe resources, due to not being seen as high risk compared to other sectors. Compared to sectors like agriculture, adventure activities have low fatality rates.¹¹ Safety audits of operators also provide an extra check that risks are being managed well in this sector, which is not present in most other industries.

WorkSafe's limited involvement in the regime may have amplified other weaknesses in the regime, such as inconsistent levels of understanding and practices towards 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 regime. 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 will include reviewing WorkSafe's engagement approach with the sector and relationships with other actors in the regime.

These changes have the potential to significantly strengthen how WorkSafe supports the sector and fulfils its regulatory roles. However, we think some broader changes to the roles and responsibilities of WorkSafe, operators and others are also needed to support WorkSafe to take a stronger role in this regulatory system.

⁹ 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.

¹⁰ This health check can be accessed at <https://www.worksafe.govt.nz/topic-and-industry/adventure-activities/documents-and-resources/>

¹¹ Between 2014 and December 2019 there were 32 deaths in adventure activities. In the same period, there were 92 deaths in agriculture.

In combination, these factors contribute to a situation where:

- There is a high rate of harm in adventure activities from natural hazard events, and this rate does not appear to be declining over time. Around six people a year die in adventure activities, four of these deaths result from natural hazard events.
- Natural hazard-related catastrophic events (more than five fatalities) continue to occur in the sector on a periodic basis. These events occur at least every 10 years with each having around 8 fatalities and 7 serious injuries.
- The current regulatory regime does not explicitly address the risks that come from natural hazards. This means we may not have enough assurance that all operators operating in high-risk environments have adequate risk assessment and management processes in place.
- The full range of risks that occur in the sector may not be well recognised or understood, which weakens the effectiveness of the regulator and could lead to gaps in operator practice.
- The regulator lacks 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.
- Fatalities and serious injuries in the sector impose significant costs to New Zealand's public health and ACC systems,¹² reduce public confidence in the safety of the adventure activities sector, and diminish New Zealand's international tourism brand.

¹² For example, the Whakaari/White Island eruption led to \$14 million in hospital costs.

Part Two: Proposals for change

The second part of this consultation document sets out our suggestions for changes that could be made to the adventure activities regulatory regime.

The main goal of these changes is to reduce the amount of harm that occurs to workers and participants in adventure activities. This will be done through improving how operators and others manage risks from natural hazards and strengthening WorkSafe's regulation of the sector.

We also want to avoid these changes having a chilling effect on the adventure activities sector and to continue supporting public access to the outdoors and recreation activities.

If implemented, these proposals are likely to result in:

- A reduced number of deaths and injuries from natural hazards and a reduced likelihood of catastrophic harm events occurring in the sector over time.
- Improvements in how risks in adventure activities are assessed, monitored and communicated by operators, WorkSafe and others involved in the adventure activities regime.
- The regulator having more information about risks in adventure activities and more flexible powers to intervene where there are safety issues, supporting it to take a stronger role.
- Economic benefits from reduced harm in the sector, such as reduced draws on New Zealand's health and ACC systems, productivity gains from reduced injuries, and avoiding negative reputational impacts to New Zealand's tourism industry.

We are presenting a package of proposals

This consultation document presents a package of regulatory and non-regulatory proposals that could work together, individually, or in combination to support safety standards in the adventure activities sector.

We want to hear your feedback on which of these individual proposals will help meet our objectives, and what you think the benefits and costs of each of these changes may be. We also want to hear any other changes you suggest should be made to help reduce the amount of harm that occurs in the adventure activities sector.

How will we decide which changes will be made?

Our criteria for assessing which of these proposals should be brought into effect are:

- Will the change be **effective** in reducing harm through improving management of natural hazard risks or supporting WorkSafe to take a stronger role regulating the sector?
- Are the changes **practical** for operators, WorkSafe and others involved in the system to implement?
- Will the costs of these changes be balanced and **proportionate** to the increases in safety they will create, and not unnecessarily restrict people's access to taking part in outdoors and recreation activities?
- Any new requirements will be **clear** about what the responsibilities of the regulated parties will be and the processes that they must follow.

Along with your comments on the particular proposals outlined below, we also want to hear any other changes you think could be made to the adventure activities regime to:

- help improve how operators and others manage risks from natural hazards
- support WorkSafe to have a stronger role regulating the adventure activities sector.

4. Supporting better management of natural hazards

Natural hazards are physical, quick-onset natural events with a degree of localised impact that have the potential to cause fatalities – like landslides, avalanches, flash floods and volcanic eruptions. Because most adventure activities take part in the natural environment, almost all need to manage risks from natural hazards.

We think there are three key ways the adventure activities regulatory system can support good practice for managing natural hazard risks:

- **Being specific about who is responsible for what in managing hazards.** A number of parties have roles to play in managing hazards, such as operators, landowners and guides. For hazards to be managed well each party needs to understand what their roles are, and be accountable if they seriously fail to fulfil their responsibilities.
- **Ensuring operators have access to good information about hazards.** Many natural hazards are complex and difficult to monitor and assess. We need to ensure the system supports operators to have access to good information, and provides a check that they are accessing and taking into account relevant technical advice.
- **Ensuring operators have effective risk management systems in place.** As well as having good information, operators need to put good practices in place to manage natural hazard risks. The system should support operators to understand what good practice is, and provide a check that activities only go ahead when operators have systems in place that keep risks at acceptable levels.

Q1	<i>In your experience, how well do you think natural hazards are currently being managed in the adventure activities regime?</i>
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There are a number of different perspectives and approaches to managing natural hazards

Mātauranga Māori (Māori knowledge) provides a perspective on how natural hazards should be considered and managed, and is an additional source of information about hazards we can draw on. We are currently doing further work about how we can integrate mātauranga Māori into our approach towards managing natural hazards in adventure activities, and this will be used to support our further discussion and analysis.

We would like to hear any feedback you have about how mātauranga Māori can be used to support the good management of natural hazards.

Q2	<i>How do you think we can use mātauranga Māori to support good management of natural hazards within the adventure activities regime? Are there other perspectives on how natural hazards should be managed that should be considered?</i>
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Requirements on operators

1 An explicit requirement to assess and manage natural hazard risks

Operators have an obligation to manage natural hazard risks as part of their general duties under the HSW Act.

While many registered adventure activities manage these natural hazards well, others may not be considering the full range of natural hazards encountered as part of their activities. For instance, 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 where the activity takes place.

To help address this, we propose introducing a specific regulation that makes it explicit that operators are required to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities.

Providing a specific requirement in regulations would help in ensuring that operators understand the need to identify and manage natural hazard risks.

The regulation could specifically require that operators:

- Make reasonable efforts to identify what natural hazards may affect their activities and assess the level of risk each of these hazards pose. This would include having regard to information about hazards provided by other parties, such as landowners or technical advisors, and, if no expert advice is available, may include getting their own reports on hazards.
- Manage activities in a way that eliminates or minimises, so far as reasonably practicable, the risk posed by the natural hazard (for instance, considering if routes can be taken to avoid the hazard).
- Have processes in place to check risks are at acceptable levels before allowing an activity to go ahead.

Operators would be required to apply these risk assessment and management standards to all natural hazards that could be reasonably predicted to affect their activities.

This proposed requirement would be added to the Adventure Activities Regulations and supported by guidance or other information about how operators can meet these requirements.

We expect many operators will already have systems in place that would meet these requirements. However, by introducing a specific requirement in regulation we think we can help ensure all operators are following these good practices, and encourage more consistent standards of practice across the sector towards managing natural hazard risks.

Q3

Do you think an explicit requirement for operators to assess and manage natural hazard risks will improve safety in the adventure activities regime? Why/why not?

2 Pre-set policies for when activities should be called off

Currently, neither the Adventure Activities Regulations nor the safety audit standard have specific requirements that operators have clear, pre-set policies and processes in place for when activities will be cancelled due to conditions being too risky, or for which of their staff are responsible for making decisions to call activities off.

This lack of specific requirements in the regulations and audit standard means it is left up to each operator to work out what the appropriate systems are for their particular situation. This leads to some variation in the policies and practices different operators have in place.

We think providing more specific requirements for operators will help ensure operators more consistently adopt good practices, and will emphasise the importance of clear standards for deciding on when risks are and are not acceptable.

We propose introducing specific requirements in the regulations or safety audit standard requiring operators to have policies and processes in place to consider when natural hazard risks may be unacceptable and call activities off.

Specific requirements could include:

- operators having clear, pre-set policies in their safety management systems for under what conditions they will call activities off
- operators having plans and systems in place for how they assess conditions to ensure risk remain at acceptable levels
- safety management systems including clear roles and responsibilities for which of their staff members (at both the manager and frontline staff level) are responsible for deciding if activities should be called off at each stage of the activity
- specific requirements to tell participants about risks from current conditions and at what point activities may be called off.

Q4	<i>Do you think introducing an explicit requirement for operators to have clear, pre-set policies and processes for when activities will be called off will improve safety in the adventure activities regime? Why/why not?</i>
Q5	<i>If this requirement was introduced, what are the key elements operators should consider when making the decision to call off activities?</i>
Q6	<i>Are there any other ways you think adventure activities operators could improve the management of natural hazards?</i>

Requirements on land owners and managers that provide access

Adventure activity operators are not always the party in the best position to know about or assess natural hazard risks. In some situations the responsible land owner or land manager will be in a better position to assess and advise on risks, particularly those relating to the land itself, such as risks of landslide or collapse, or avalanche or flooding risks related to a particular location.

Owners and managers of the land will also generally be the party best able to monitor and control the number of people that are exposed to a hazard where more than one operator is providing activities in the same area.

We have heard some land owners and managers take a hands-off approach to the management of natural hazards and regard the management of risks as largely the responsibility of adventure activities operators accessing their land.

To address this, we propose an explicit requirement for landowners and land managers who provide adventure activity operators access to their land, to be involved in the management of natural hazards that may affect these activities.

An explicit specific requirement in the regulations would help to ensure that landowners support good management of natural hazards.

Operators and land owners and managers would be expected to cooperate and share information to support each other in the management of natural hazards.

Who would be affected by this requirement?

This proposed regulation would apply to all PCBUs that manage or control land on which adventure activities have been permitted to operate. While it will depend on the circumstances, generally landowners will be PCBUs.

However, in practice, the groups most affected by this requirement will be public agencies, particularly the Department of Conservation.

DOC have estimated that around 60 percent of adventure activities take place on public conservation land. Many of the remaining activities take place on waterways or land controlled by territorial local authorities or in marine areas.

The regulation may also apply to private landowners or land managers in a small number of cases.

There will also be situations in which there is no land owner or manager to provide permission for operators to operate in a particular area. For instance, certain marine areas may not have any landowner responsible for controlling access. In these cases operators may need to do further investigations into hazards themselves to ensure they have all necessary information to meet their general duties to manage risks.

Explicit requirements on land-owners and managers could be framed in two ways

Land-owners and managers could be required to either:

- a) Provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about);

or

- b) Assess and manage the risks of natural hazards when granting permission for adventure activity operators to operate on their land.

Providing information

Under this option, land-owners and managers would be required to make reasonable efforts to assess the areas of their land they are allowing adventure activity operators access to for any hazards, and to communicate to operators about the risks these hazards create.

Operators would be required to have regard to this information when developing their safety policies and processes. For instance, operators could use the information provided by landowners to design activities to avoid particularly hazardous areas.

In many cases this requirement would not require land-owners or managers to do significantly more than they are already. However, in situations where there is a natural hazard on their land that the land-owner or manager does not have information about, they may be required to contract technical advisors to advise them about their risks. For instance, a land-owner may need to contract volcanologists to assess the likelihood of eruptions or geotechnical engineers to assess the risks of a cave or cliff collapse if no information is currently available on these hazards.

The costs of this advice may be passed on to operators as part of permitting or concession charges. Alternatively, some land-owners may choose not to allow operators access to areas of their land with significant natural hazards that would require assessment.

Managing risks when granting access to land

Under this option, in addition to assessing their land for hazards and providing information to operators, land-owners and managers would be required to control access to their land in ways that manage risks to acceptable levels.

For example, where hazards are present some land-owners and managers could be required to add conditions to the access they grant operators that:

- restrict operators from accessing particularly hazardous areas
- limit the number of participants that are allowed in a hazardous area at any one time
- restrict operators from accessing their land at certain times, for instance when certain alerts are in place or at particular times of year.

Land-owners and managers would be required to make reasonable efforts to ensure they only permit operators to access their land where conditions are reasonably safe and activities can be undertaken with acceptable levels of risk.

In deciding if conditions are reasonably safe, land-owners and managers would be required to consider all hazards they are aware of, or should reasonably be aware of.

What are “reasonable efforts”?

Under either proposed option, we expect land owners and managers to make “reasonable efforts”. What reasonable efforts are will vary across different situations, based on factors like the type of hazard and whether the risk arises from a feature of the land they control.

For instance, for general weather hazards such as high winds or lightning strikes, reasonable efforts from a land-owner to assess and manage risks may be checking that operators are accessing relevant weather forecasting services.

However, if a land-owner permits an operator to access a dangerous canyon system on their land, reasonable efforts may include providing the operator records of previous flood levels, noting any unstable cliff areas and getting expert advice on the likelihood of collapse, and working with the operator to develop emergency plans.

Q7	<i>In your experience, how do operators and land-owners currently work together to manage hazards?</i>
Q8	<i>Do you think explicit requirements for land-owners or land managers to work with registered operators in order to manage natural hazards will help improve safety in the adventure activities regime? Why/why not?</i>
Q9	<p><i>If a specific duty was introduced for land-owners and managers, do you think they should be required to:</i></p> <ul style="list-style-type: none"> <i>a) provide information to operators about natural hazard risks on their land; or</i> <i>b) assess and manage the risks of natural hazards on their land</i> <p><i>What are the benefits and costs you see under each approach?</i></p>
Q10	<i>Are there any other ways land-owners/land managers could improve the management of natural hazards to support adventure activities operators when accessing their land?</i>

5. Changing how we monitor, assess and communicate risks

We think there are three areas we could improve the way the adventure activity regime monitors, assesses and communicates risks:

- **Introducing a risk classification system** that will provide a way to differentiate between the different risks faced by different activities, and provide a standardised way to compare and communicate risks.
- **Explicit risk disclosure requirements** to support participants and others to understand and accept the risks of activities they are participating in.
- **Creating a stronger role for government to support decisions on acceptable risks**, either through providing operators more guidance to support their decisions about whether risks are acceptable for activities to go ahead, or creating a more active role for government to prevent activities going ahead if risks are unacceptable.

Introducing a risk classification system

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 regime does not currently provide a way to differentiate between these different risk levels when setting requirements. 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.

We think there is an opportunity to adjust the requirements of the regime to better reflect the different risk levels of activities. For instance, operators offering low risk activities may not need to be audited as frequently as they currently are, while we may want operators offering high risk activities to be audited more frequently.

Differences in risk levels between different activities are also not always well communicated. While each operator is required to develop a good understanding of the risks involved in their activities, there is no simple, consistent mechanism in place for them to communicate this information to interested parties like participants, third party providers or WorkSafe.

We think there is an opportunity to better recognise, communicate and act on these differences in risk level through introducing a risk classification system.

How could a risk classification system work?

We consider the types of risk faced by adventure activities broadly fall into two categories:

- **Environmental risks** from the areas the activities occur. These include both natural hazards participants are exposed to (like if an activity goes through areas prone to avalanches or landslides), and other risks from the area activities operate in (such as the risk of a dam suddenly releasing water).
- **Activity technical risks** that arise from the type of the activity being provided. These include risks from equipment failing and the level of technical skill participants require to take part in the activity safely.

The legal definition of “adventure activity” in the Adventure Activities Regulations already reflects these two categories of risk. Part of the definition of adventure activity is that the activity either would expose a participant to serious risk if the operator’s safety management systems (such as equipment) fail, or deliberately expose a participant to dangerous terrain or waters.¹³

This risk classification system may be established either through regulation or by another legal instrument. WorkSafe and other government agencies would work together to develop the criteria for adventure activities to be assessed against, drawing on industry expertise and scientific advice about hazards.

Operators would then be expected to apply these criteria to their operations and assign each activity they offer an overall “risk score”. As part of existing safety audits, auditors and technical experts would confirm whether an operator’s activities have been assigned an appropriate risk score.

Regulatory changes to support a risk classification system

To put in place a risk classification system, we would need to make several regulatory changes.

1. **Introducing a specific requirement for operators to include a risk assessment in their safety management plan**

Operators are already required to identify and assess the risks associated with their activities. This is both a requirement of the audit standard and part of how operators to meet their general duties under the HSW Act.

To support a risk classification, we will need to introduce a specific requirement in regulations for all operators to document the results of this risk assessment in their safety management plans. This regulation would also require operators to ensure they are assessing both environmental and activity technical risks.

Most operators will already have some form of safety management plan in place to meet audit requirements. However, introducing this requirement in regulation will ensure all operators have such a plan in place and will standardise the minimum information that all plans need to include.

The risk assessment would cover the critical hazards faced by the operator’s activity. We consider that an operation’s “critical hazards” would be the hazards that create a reasonably

¹³ Adventure Activities Regulations, regulation 4 (1).

foreseeable risk of multiple fatalities through either a single accident or a series of reoccurring accidents.

Key elements we expect would be required as part of the risk assessment are:

- a statement about the types of critical hazards each of the operator's activities face
- the results of the operator's risk assessment on these critical hazards, describing the level of risk their activities face
- a brief outline of the control measures the operator has in place to manage these critical hazards.

An operator would be expected to submit their risk assessment included in their safety management plan to an independent auditor as part of their safety audit. They would also be expected to submit this risk assessment to WorkSafe as part of their registration.

Operators would also have a requirement to regularly review and update their risk assessment, including reviewing it after any serious incidents.

2. Establishing the criteria for classifying risks

Operators would be required to compare the risks of their activities against risk classification criteria, and assign each activity a risk score. This risk score would be part of the information recorded in the operator's safety management plans.

Key factors in deciding what risk score an activity received would be how likely a hazard event is to occur, how well we can predict when such a hazard event may occur, and the level of harm that could result. For example, relevant factors may be:

- how frequently hazardous events occur during activities or in the area in which activities operate in
- the number and range of different hazards participants are exposed to during an activity
- the length of time participants are being exposed to different types of hazard
- whether hazards can be forecast or identified before an activity begins, or can only be identified once an activity has begun
- the likelihood of deaths or serious injuries resulting if a hazard event does occur during an activity.

A risk classification score would measure the risks that are involved in an activity before the steps the operator takes to manage them are taken into account. Whether an operator has passed their safety audit would then confirm whether the operator has safety systems in place that manage these risks to acceptable levels.

Where an operator offers a range of activities, or a range of different trips within an activity that have different risks (for instance, offering both beginner and advanced journeys) each activity would receive its own risk score.

Some simple examples of how a risk classification system could apply to adventure activities are below:

Example 1:

Dani's High Ropes Ltd. operates a high ropes course. This activity operates at a single location, on flat land. The only significant environmental risk to participants come from high winds, which are generally predicted by weather forecasts. Dani's High Ropes therefore has a low risk rating for environmental risks.

While this high ropes course does not require special technical skill from participants, they are heavily reliant on their equipment. If a rope or carabiner failed or was not attached properly, they could fall 20m. Dani's High Ropes therefore has a medium risk rating for activity technical risks.

Example 2:

1Mountain Guides Ltd. Operates guided mountaineering trips in the Southern Alps. The trips can encounter avalanches, sudden onset storms, high winds and rockfalls. While weather and avalanche risks can be managed guides still need to be on the look-out for them and the risk of rockfalls. 1Mountain Guides therefore has a high risk rating for environmental risks.

The type of terrain the trips operate in requires the use of ropes and a high level of technical skill from the guide. Participants must also have proper equipment to protect themselves from exposure and to prevent risks like falls. 1Mountain Guides therefore has a high risk rating for activity technical risks.

What would a risk classification be used for?

We think there are three main ways a classification system could support better management of risks in adventure activities:

1) To set how often operators must be audited

One of the major ways we think a risk classification system could be used is to set how often different activities are required to have full, onsite audits.

One of the limits of the current adventure activities regime is that all adventure activities are treated largely the same. All operators are required to undergo full, onsite audits against the same audit standard at least every three years. Flexibility is only available in what (if any) conditions auditors place on an operator's audit certificate, and how the auditor monitors an operator between these onsite audits.¹⁴

This lack of flexibility does not reflect that different types of activities have significantly different types of risk. In particular, we think requiring full, onsite audits as often as every three years may not be necessary for some low risk operations. In contrast, for some high risk activities, we may want operators to be audited more often than once every three years.

¹⁴ For instance, an auditor can require an operator to be audited on-site more frequently than every three years, have them provide documents for the auditor to review, or just require them to provide a declaration they are continuing to follow their safety plans each year.

A risk classification will provide a way to group different operators and activities into low, medium and high risk categories based on their risk scores. This will allow us to set audit requirements that reflect these different categories of risk.

We propose setting how often an operator must be audited based on the risk classification their activities receive:

- **low risk** activities would only be required to undergo an **on-site audit** at least **once every four years**
- **medium risk** activities would continue to require an on-site audit at least **once every three years**
- **high risk** activities would be required to undergo an on-site audit at least **once every two years.**

Auditors would continue to monitor operators between these full, on-site audits to ensure they continue to meet safety standards and would continue to be able to give operators audit certificates shorter than these maximum lengths where this is appropriate.

Operators would continue to be required to register their operations with WorkSafe every three years. As part of this registration, the operator would be required to show they have a current audit certificate and to confirm they have obtained a new audit certificate once the previous one expires.

2) To better communicate risks to participants

A risk classification system could also help improve how the risks of activities are communicated to participants and other interested parties, such as third party ticket providers.

A risk score would be a relatively simple and understandable way to communicate how risky an activity is and how this compares to other adventure activities. It would provide a consistent and standardised way to explain risk across different activities, rather than relying on how operators describe their activities and the associated risks in their advertising. This will help participants to make informed decisions and select activities suited to their skill level and appetite for risk.

Used in this way, risk scores could be communicated by operators through their websites or other advertising (along with their status as a registered adventure activity), as well as disclosed to participants at the time of an activity. Risk scores could also be published on the register of adventure activity operators.

3) To better identify and understand risks

A risk classification system could also be a useful tool to help operators, WorkSafe and others identify and consider risks before incidents occur.

For operators, working out their risk classification will require all operators to consider what types of risk are most relevant to their operations, and identify where they may need to get more information to understand how significant these risks are. Classifications may also act as a prompt for some operators to consider how they can redesign some of their activities to avoid certain risks.

For WorkSafe, a risk classification could become part of the way WorkSafe identifies which adventure activities become priorities for support. Along with other sources of information, such as registrations, incidents and inspections, risk classifications could be used to identify higher risk activities that can benefit most from its intervention and support before any incidents occur. 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 activities.

How would activity classifications be set?

Operators would first be expected to apply the risk classification criteria to their operations 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. The adventure activities certification scheme could be used to set out the process for dealing with disputes.

WorkSafe, when accepting an operator for registration, would be able to examine the risk classification provided by an operator. If the risk classification that was provided for an activity did not seem appropriate, WorkSafe could request more information from the operator about how the classification had been reached and, if necessary, require the classification to be changed.

A range of guidance materials and examples would be created to explain the risk classification system and help operators and auditors understand how it should be applied to their particular operations.

Q11	<i>Do you think a risk classification system would support participants and others better understand the risks involved in adventure activities? Why/why not?</i>
Q12	<i>What are the benefits and issues of introducing a risk classification system?</i>

Q13	<p><i>We consider a risk classification system could assess the risks of an adventure activity under two broad categories:</i></p> <ul style="list-style-type: none"> • <i>Environmental risks</i> from where the activity occurs (for instance, does it go through avalanche or landslide prone areas). • <i>Activity technical risks</i> that arise from the type of the activity being provided (such as reliance on equipment and the technical skill participants need to take part safely). <p><i>Do you think scoring activities based on their environmental and technical risks will provide a fair indication of the risks involved? Are there other factors that should be included in any risk classification system?</i></p>
Q14	<p><i>Do you support setting how often operators are audited based on their activities risk classification (e.g. the lower the risk the longer length of time between safety audits)? What benefits and issues do you see with this approach?</i></p> <p><i>If so, what do you think is the optimal length of time between on-site safety audits for low risk activities, medium risk activities and high risk activities?</i></p>

Improving risk disclosures to participants

A key part of how we ensure risks are acceptable in the adventure activities sector is through participants making informed decisions. We expect participants to be making their own judgements, when deciding to take part in an adventure activity, that the risks of the activity are acceptable to them.

However, we have heard that participants do not always feel that the information they are given by operators provides them a good understanding of the risks involved in adventure activities. Some of the tools used by operators to communicate risks, such as waiver forms (where participants sign a form acknowledging there is a risk of injury from the activity),¹⁵ are not always useful to help participants actually consider and understand the risks they may face.

The safety audit standard currently requires all operators to have procedures in place for disclosing risks and communicating safety information to participants. However, the standard does not provide detail about what operators should include in these disclosures or how these disclosures should be made. This leaves it up to operators to design their own approaches for how they manage risk disclosure.

This flexibility allows operators to tailor their approaches to the needs of their particular customers and the particular risks their activities face. However, it does also allow some variation in the quality and timeliness of risk disclosures that operators make. For instance, we have heard some operators only provide detailed explanation of risks once customers are present on-site to book, or immediately before they take part in activities.

To address this, we propose introducing more detailed requirements for how and when risk disclosures to adventure activity participants should be made, and what information disclosures should include.

We think these more detailed standards will help support more consistent approaches towards risk disclosures among operators and spread good practices.

Standards about how risk disclosures should be made could include:

- what information should be made available to potential customers before they book
- key information being provided to participants both verbally and in writing
- disclosures being adjusted to meet the language needs of participants
- guides updating participants about risks throughout activities as conditions change
- checks that participants understand the information they have been provided.

Standards about the minimum information disclosures should include could cover:

- information about what hazards the activity will encounter and how these are managed
- the level of difficulty involved in the activity

¹⁵ Waiver forms also do not allow an operator (or any other business) to avoid or change their legal responsibilities to manage health and safety. See section 28 of the HSW Act.

- participation requirements, such as the fitness levels and any activity qualifications participants need to have
- the availability of emergency assistance
- confirmation the operator is meeting legal requirements (for instance, confirming that they are registered with WorkSafe and have a current safety audit certificate).

If the proposal to introduce a risk classification system was adopted, the risk score of each activity could also become part of what operators are required to disclose to participants.

Q15	<i>What types of information is useful to help participants and others understand the risks involved in adventure activities?</i>
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Acceptable levels of risk

Adventure activities are inherently risky. In most cases, operators are able to manage these risks to acceptable levels by adopting good safety management practices. **However, we think there may be some circumstances where it is too risky for adventure activities to go ahead, regardless of how an operator attempts to manage risks.**

In particular, these circumstances are most likely to occur when an activity has significant risks from natural hazards. For instance, unacceptable risk levels may relate to:

- identified high-risk natural hazards, e.g. climbing on a rock-face with an imminent risk of collapse
- natural hazards under certain conditions, e.g. volcanos when alert levels are at prescribed levels
- where precursor natural hazard events have taken place, e.g. successive large avalanches taking place in a specific location.

Adventure activity operators are already required to do all that is reasonably practicable to manage the risks of their work. The vast majority of operators are likely to design their activities to avoid locations and situations that might pose unacceptable levels of risk. Adventure activity safety audits then provide a check that operators have put appropriate safety management systems in place.

In making judgements about whether they can manage risks to acceptable levels operators will draw on a range of sources. For instance, operators are likely to refer to official warnings about conditions (such as severe weather warnings, volcanic activity or avalanche alert levels) and precursor events in an area (such as successive avalanches in an area).

Operators will also draw on the expert judgements of their staff and advisors to work out if the risks of operating an activity at a particular time or in a particular location can be managed to acceptable levels.

In most cases, we think leaving these decisions about whether operators can manage the risks of activities to operators is appropriate. Operators are the parties with staff on the ground to dynamically assess conditions, and will often have staff or advisors with high levels of expertise in their activities.

However, operators do have commercial incentives to keep operating even in situations of heightened risk. This could lead some operators to push the boundaries of what is considered acceptable. Natural hazards also are complex and require significant expertise to manage, operators may not always be in the best position to manage natural hazard risks.

Given the incentives on operators, and the high levels of harm that can result from natural hazard events, **we think it is also useful to consider if there are occasions when the government should be more involved to ensure risks are kept to acceptable levels.**

There are a range of ways the government could further support decision making about acceptable risk levels

At the most basic level, the government can support operator decision making through **offering more guidance about risks**. This could, for example, include more information about how operators should identify and calculate risk levels, and identify the authoritative sources operators should look at for information about conditions.

This approach would help address situations where operators do not understand how they should decide if activities should go ahead, and support them to access relevant information. However, it would still leave all decisions about whether activities can be managed to acceptable risk levels to each individual operator, and would still rely on operators to be able to interpret at times complex information about the risks of different hazards.

Alternatively, we could introduce **a role for government to restrict activities from going ahead based on the risk level of natural hazards**.

There are several ways this could work:

- In chapter 6, we discuss expanded powers for WorkSafe to cancel or suspend the registration of adventure activities operators where necessary for safety. Under a **WorkSafe-led approach** these expanded powers could be used to cancel or suspend operators that are operating beyond an acceptable level of risk. WorkSafe would be required to draw on scientific advice when making these decisions.
- Under a **Minister-led approach** the Minister for Workplace Relations and Safety could cancel or suspend certain activities, or types of activity, operating in certain circumstances or under certain conditions, where the risks of this activity are beyond what is acceptable. To support this power WorkSafe would be required to develop clear guidance for operators, drawing on scientific advice, to define acceptable levels of risk and how to apply them in practice.
- Under a **Cabinet-led approach** Cabinet, with reference to an expert authority, could prohibit certain activities, or types of activity operating under certain conditions where the risks of this activity are considered unacceptable. Like under the Minister-led approach, all operators would be required to follow Cabinet’s decision and not offer activities in the circumstances Cabinet has identified as presenting unacceptable risks.

Under these scenarios, scientific advice would be used as an input into any decision making. This could be formalised as part of the regulatory process.

Q16	<i>Do you think the government should have a more active role in defining acceptable levels of risk in the adventure activities regime? Why/why not</i>
Q17	<i>Are there situations when the government should prevent activities going ahead (for instance, in certain high risk areas or when certain alerts are in place)? Why/why not? And if so, in what types of situations?</i>

6. Strengthening the role of WorkSafe

For the adventure activities regime to work well and improve safety standards it needs to be supported by a strong regulator. WorkSafe needs to monitor and administer the regime, support operators to develop good safety practices, and step in to intervene if operators and others are failing to manage risks to acceptable levels.

One of the key findings of the 2020 targeted review was that the adventure activities sector was not always well supported by WorkSafe. The review also identified that there were gaps in the way WorkSafe was performing its roles.

The Adventure Activities Regulations and other legislation give WorkSafe three broad roles in the adventure activities regime:

As the Regulator , WorkSafe is responsible for:	As the Registrar , WorkSafe is responsible for:	As Owner of the Audit Scheme , WorkSafe is responsible for:
<ul style="list-style-type: none"> • Monitoring to check operators and others are following health and safety laws, and enforcing requirements where they are not • Engaging with duty holders (such as operators, workers and landowners) to identify and discuss issues • Educating operators and participants about what their health and safety obligations are, and what good practice is to manage risks • Monitoring and leading the overall system to ensure the regime is working well and improving safety standards 	<ul style="list-style-type: none"> • Registering operators who have passed their audit and provided all required information • Suspending or declining to register operators who do not meet requirements or who have a history of serious failures 	<ul style="list-style-type: none"> • Recognising auditors who are able conduct safety audits • Developing, publishing and reviewing the Safety Audit Standard that sets the requirements operators must meet to pass their audit • Maintaining the accreditation scheme that sets the requirements for how auditors conduct their audits

Where are the opportunities for improvement?

We think that there are two key areas improvements can be made:

- **Increasing the information operators provide to WorkSafe** about their activities.
Increased information will give WorkSafe a better understanding of what is happening in the adventure activities sector and the types of issues that are coming up. This will allow it to better identify where it may need to support operators or enforce requirements.
- **Broadening WorkSafe’s powers to cancel and suspend an operator’s registration.**
Currently, WorkSafe’s ability to cancel and suspend registrations is extremely limited. We want to ensure WorkSafe has the powers it needs to step in and stop activities from going ahead where operators are clearly not meeting their responsibilities.

Increasing the information operators provide to be registered

One of the main ways WorkSafe receives information about adventure activities is through operator registrations.

However, the information operators are required to provide for registration is very limited – such as the operator’s name, location and the types of activities that it provides. A copy of the operator’s audit certificate also must be provided, but this largely just confirms that the operator has passed a safety audit and any safety conditions the auditor has placed on their certification.

Information provided by operators in registration can also be vague. For instance, the information provided by some operators about the location they provide their activities is in some cases as general as “the South Island” or “throughout New Zealand”.

We propose increasing the information operators are required to provide for registration to include:

- **A copy of the auditor’s report** that outlines in detail what areas an operator is doing well, as well as in areas where more attention may be needed. If the proposal for a risk classification system discussed in chapter 5 is adopted, this could also include an explanation of how the activity’s risk classification has been calculated.
- **More information about activities run by the operator** such as the number of participants going on activities, whether activities operate seasonally or year-round, the size of groups and how many guides accompany them, and who owns the land they operate on.
- **Information about the technical advisers** who provided the operator advice about their activities and any environmental hazards they face during their safety planning, such as the adviser’s qualifications and/or experience.

In many cases, we expect operators will have this information available already. We consider the main impact this change will have on operators will simply be that they are required to provide this information to WorkSafe.

Additional information such as this will support WorkSafe to understand who is providing adventure activities, the types of activities are occurring, and the risks workers and participants face. Identifying which operations and types of activity pose particularly high risks will support WorkSafe to target its actions and support effectively.

Q18	<i>What information would be useful for operators to provide WorkSafe about their operation?</i>
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Adjusting the registration process

We also think adjustments could be made to the registration process, to build a more direct relationship between operators and WorkSafe, and to better ensure the information WorkSafe gets about operators remains up to date.

Requiring operators to register with WorkSafe directly

Adventure activities registration follows an unusual process. Rather than operators registering with WorkSafe directly, they provide their information (and registration fee) to their auditor. The auditor then passes this information on to WorkSafe.

Having auditors as a go-between saves operators the task of filling in a registration form. However, it misses an early opportunity to start building a relationship between WorkSafe and the operator. Starting to build a direct relationship between WorkSafe and operators when the operator first registers is useful to:

- help the operator understand how they can contact WorkSafe with any questions
- allow WorkSafe to quickly get back to the operator if it has any questions about the information they have provided
- let operators know how to update WorkSafe if their details change.

We propose that operators are required to register as an adventure activities operator with WorkSafe directly. This would involve filling out a registration form and providing requested information like the operator’s audit report to WorkSafe.

Introducing annual update requirements

For the information operators provide to WorkSafe when they register to be useful, it needs to remain up to date and accurately reflect how operators are currently operating.

We propose that operators are required to provide annual information to WorkSafe, to ensure the details they provide at registration remain up to date.

This annual reporting would not require operators to go through a full registration process. Rather, they would be expected to simply confirm the information they have provided remains correct and update it as necessary.

Information requested in these annual updates could include details like any changes to the activities they offer or areas they operate in, the number of people taking part in their activities, and any changes to the technical advisors or information sources they are using to support their safety planning.

Annual reporting would be an extra administrative task for operators. However, we expect that this task will not be a significant burden. We expect most operators will have the required information readily available and many operators will already be providing similar information to auditors on a yearly basis.

Q19	<i>What would be the best process for operators to provide information to WorkSafe?</i>
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Developing notifiable incidents specifically for the adventure activities sector

The HSW Act requires businesses and other operations to notify WorkSafe as soon as possible after certain “notifiable events” occur. Notifiable events include deaths and serious injuries (generally those that require immediate hospital treatment) resulting from the business’s work.

Certain near-miss incidents are also notifiable events, called “notifiable incidents”. These notifiable incidents must be reported to WorkSafe when they happen, whether or not any injury has in fact occurred.

This information about near-miss incidents is useful to help WorkSafe understand the types of issues that are occurring in an industry and help businesses take corrective action before any serious accident occurs. If one business is having a number of notifiable incidents, it may also indicate they have problems in their safety practices.

Information about near-miss incidents and other notifiable events can also be useful to help operators better understand risks. We discuss how information about these events could be provided to the sector in chapter 9.

The HSW Act defines what are “notifiable incidents”. These incidents include serious fires, escapes of steam or gas, and structures collapsing where these have the potential to be a serious risk to a person’s health and safety.

This current definition of notifiable incidents focuses on risks from traditional industries and does not necessarily cover well the types of near-miss events that occur in adventure activities. In particular, it does not require adventure activity operators to report near misses from natural hazard events to WorkSafe.

We propose developing a list of “notifiable incidents” that operators are required to report to WorkSafe, specific to the adventure activities sector.

These adventure activity notifiable incidents could include:

- a volcanic eruption, landslide or significant rockfall occurring in the area adventure activities regularly take place
- workers or participants being stranded in a cave, gully or other enclosed space by rising water
- any incident that requires workers or participants to be rescued
- a participant or worker falling from a height over 2 metres
- a participant or worker suffering hypothermia.

Q20

What types of incidents (in addition to deaths and serious injuries) do you think all adventure activities operators should be required to notify WorkSafe of?

Expanding WorkSafe’s powers to cancel or suspend registrations

The second area in which we propose changes to strengthen WorkSafe’s role is expanding WorkSafe’s powers to cancel or suspend the registration of operators, or refuse an operator for registration, where this is necessary for safety.

WorkSafe currently has several powers that can be used to stop activities going ahead. WorkSafe inspectors can issue prohibition notices to stop an activity going ahead where it carries an immediate risk of exposing a person to a serious health or safety risk. As the Registrar, WorkSafe can cancel or suspend an operator’s registration to provide adventure activities where they have failed to comply with the conditions of their audit certificate, or where they have so seriously failed to provide activities in a safe way they have endangered a person’s life.

However, these current powers can be difficult for WorkSafe to use in some cases. For instance, it can be difficult in some situations to show that a person is immediately going to be exposed to a serious risk, or that a person’s life has been endangered.

To allow WorkSafe more flexibility in when they are able to intervene, we propose expanding the situations in which WorkSafe can cancel or suspend an operator’s registration, or decline to accept an operator for registration.

This will allow WorkSafe to intervene and stop activities going ahead in more situations where operators have failed to ensure risks are kept at acceptable levels.

For example:

This expanded suspension power could be applied where an operator has had multiple vehicles overturn on their tours. None of the incidents so far were serious enough to endanger someone’s life, and since vehicles only overturn occasionally it is difficult to show anyone is subjected to an immediate risk. However, these repeated incidents suggest it is only a matter of time until someone is seriously injured.

WorkSafe could suspend the operator’s registration and prevent them from providing this adventure activity until they have taken steps to address these 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.

In using these expanded cancellation or suspension powers WorkSafe would be required to follow usual legal process requirements, such as informing the operator of a proposed decision and allowing them a reasonable opportunity to respond.

Q21	<i>In what types of situations would you expect WorkSafe to cancel, suspend or decline an operator's registration to provide an adventure activity?</i>
Q22	<i>Are there any other changes you think are needed to support WorkSafe to take a stronger role in the sector?</i>

7. Guidance and audit changes and published reporting information

Many of the changes discussed in this document would need to be supported by changes to non-regulatory tools like guidance materials and the audit standard. Some changes, such as strengthened disclosure requirements, may be achieved mainly through changes to the audit standard. Other changes, such as operator and landowner duties to manage natural hazard risks, would be mainly done through regulations, but would be supported by changes to guidance materials and the audit standard.

Wider changes to guidance materials, the audit standard or the audit process could also be made alongside or instead of the particular proposals we have discussed. We would like to hear your feedback on any other changes you think we should make to these tools to help strengthen the management of natural hazards, improve how we assess and communicate risks, or support WorkSafe to take a stronger role overseeing the sector.

1 Changes to the audit process

The New Zealand Adventure Activity Certification Scheme, developed by WorkSafe and JAS-ANZ, sets the requirements for how safety auditors conduct their audits. For instance, the scheme sets requirements for how auditors select which sites and activities of an operator should be assessed during an audit, and for which technical experts should support an auditor to assess how well an activity is being provided.

If current audit processes are not providing enough of a check that operators have good safety management systems in place, we can make changes to this scheme.

For example, one area changes could be made is in how auditors conduct monitoring of operators between full audits. As well as conducting a full audit of operators at least once every three years, operators are expected to regularly monitor operators to ensure they are continuing to meet safety standards. Monitoring activities are expected to occur each year. Auditors decide what form of monitoring will be appropriate for each operator, which can be further on-site audits, reviews of safety documentation or declarations from the operators that they are continuing to meet safety requirements.

In practice, we have heard that monitoring activities often take the form of documentation reviews or operator declarations. This helps keep the cost of audits down, as these types of review require less resources from auditors than on-site audits. However, document reviews and declarations do not provide as comprehensive a check that the safety practices of operators on the ground remain high.

If we consider that current practices are not providing enough of a check that operators' safety standards remain high between full audits, we could adjust the scheme. For instance, we could require that operator declarations can only be used to review auditors once every three years, with at least a document review being required in alternate years, or that operator declarations can only be used to monitor operators that only provide lower risk activities.

Q23

*Are there any ways you think the current **audit process** should be changed to improve safety standards?*

2 Changes to the Safety Audit Standard

The safety audit standard sets the requirements all operators must meet to pass their audits. It is also one of the main tools operators can refer to when considering the safety policies and systems they need to put in place.

A number of the changes we have proposed throughout this document may result in changes to the audit standard. For instance, more detailed requirements about setting standards for when activities will be called off and how risk disclosures should be made are likely to be implemented through changes to the audit standard.

Currently, the audit standard is a high-level standard. While it provides information about the general policies and processes operators should have in place, it does not provide the detail of what these policies should include (for instance, how to check staff are competent or communicate safety information to workers and participants).

If there are areas where we think all operators need to have a particular policy in place or we want all operators to follow a particular process to manage a risk, we could introduce more detailed requirements into the audit standard.

One area where more requirements could be introduced into the safety audit standard is staff competencies. The standard currently provides that operators should have processes in place to check staff competencies, and notes that nationally recognised qualifications should be used where relevant. However, it does not provide for what qualifications should be required for particular activities or roles.

Some activity safety guidelines suggest qualifications that may be relevant for frontline staff (for instance, guidelines for caving and alpine hiking). However, these suggestions are not mandatory. If there are particular qualifications we consider all guides, instructors or leaders in certain activities should hold, one way to require all operators to ensure their staff have these qualifications may be to introduce a specific list of required qualifications for a role into the audit standard.

There may also be an opportunity to align the safety audit standard more closely with international standards. A number of international standards suggest requirements about managing safety in adventure tourism. For instance, ISO 21101:2014 sets requirements for operator safety management systems, ISO 21102:2020 sets requirements for personnel competence, and ISO 1103:2014 sets requirements about the information that should be provided to participants.

Some of the changes we have proposed in this document will more closely align the New Zealand safety audit standard with these international models. For instance, our proposals for improving risk disclosures to participants are based on the suggestions of relevant international standards.

We would like to hear if there are other elements of international standards you are aware of that you feel should be incorporated into the safety audit standard.

Q24

*Are there any changes you think should be made to the current **audit standard** to improve safety standards?*

3 Guidance materials

WorkSafe and industry associations like Recreation Aotearoa and TIA provide a range of guidance materials to support operators, participants and others to understand what the requirements of the adventure activities regime are, and what good practice to manage risks looks like.

We have heard one of the most important current tools for operators and auditors are the Activity Safety Guidelines, published on the SupportAdventure website.¹⁶ These guidelines provided detailed guidance about the risks faced by different adventure activities and how these can be managed. These Guidelines can be used by operators and auditors to understand what good practice safety management looks like for particular activities. Activity safety guidelines are provided for 12 different adventure activities.¹⁷

However, there are a number of adventure activities that are not supported by a relevant Activity Safety Guideline, for instance zip-lining and high ropes courses, kiteboarding, and glacier walking.

Along with the Activity Safety Guidelines, the SupportAdventure website also provides a range of general guidance, tools and templates for operators, such as safety management plan and risk register templates.

The WorkSafe website provides general guidance on topics such as how an organisation can determine if they need to be registered as an adventure activity operator, what operators and landowners are required to do, and general information on how organisations should approach identifying and managing risks.

WorkSafe has received funding to develop further guidance for operators about natural hazards. This could include details about how operators should assess natural hazards and how they can take steps to minimise the risks these hazards present.

Various industry groups such as the Mountain Safety Council and Whitewater NZ also support operators with tools and guidance to support safety.

Q25	<i>What types of guidance are most useful to support safety in adventure activities? Are there any gaps in current guidance?</i>
Q26	<i>What types of information would be useful to include in guidance to operators about managing natural hazard risks?</i> <i>For instance:</i> <ul style="list-style-type: none">• <i>Where to get information about different types of hazards</i>• <i>The types of steps an operator is expected to go through to manage different hazards</i>• <i>Examples of what good management of hazards looks like</i>

¹⁶ <https://www.supportadventure.co.nz/>

¹⁷ Guidelines for abseiling, all-terrain vehicles, alpine hiking, canyoning, caving, coasteering, diving, heli-skiing, high wire and swing, indoor climbing and mountain biking are available on the SupportAdventure website. An activity safety guideline for rafting is published on the WorkSafe website.

4 Administrative improvements to the audit process

Alongside this consultation, we also want to discuss ways we can improve the administrative aspects of the audit process. We want to look into ways we can make this administration more efficient for WorkSafe, safety auditors and other parties involved in this system, and ensure the regime is robust and able to respond to changes in the adventure activities market.

In particular, two areas we intend to look into further are:

- **How we can more evenly spread when operators are getting audited.** Currently, around 160 of the 318 registered operators are audited and re-register their operations within a nine-month period every three years. More evenly spreading when operators are audited and registered will help spread the workload of auditors and WorkSafe across the three-year registration period, and may make it easier for operators to book audits at their preferred times.
- **Allowing WorkSafe to step in if no auditors are available.** Only two auditing bodies currently provide adventure activity safety audits. If one of these bodies was to withdraw from the market, operators offering certain activities or operating in certain areas of the country may not be easily able to get audits. In such cases, as a last resort, we may want to allow WorkSafe to step in and provide auditors directly.

We intend to discuss these issues and potential ways to solve them further with WorkSafe, safety auditors and others involved in the administration of the regime. However, we would also like to hear any thoughts you have on ways the administration of the regime could be improved.

Q27

Are there any administrative problems in the audit process you would like to comment on? How do you think these problems could be addressed?

5 Data and information sources

More general information and data about risks in adventure activities could also be useful to help operators improve their practices, and for the public understand how safety is being managed and regulated. In particular, we have heard it is often useful for operators to hear about incidents in the sector, so they can learn from what happened and consider if they need to make changes to avoid similar problems.

We have heard many operators share information well with their immediate contacts and networks. For instance, operators working in a similar area will often share information about current conditions and risks in the environment. However, there appears to be an opportunity to support the sharing of information more broadly.

We propose developing online databases to publish information about incidents in the adventure activities sector. This information could be published on the WorkSafe website, the SupportAdventure website or both.

Information could include:

- **An online log of notifiable events:** Operators are required to notify WorkSafe if certain incidents, such as deaths or certain serious injuries occur in activities. In chapter 6, we also discussed developing a list of near-miss events operators would also need to notify to WorkSafe. A log of these incidents describing what happened and where could be developed and published. This would be similar to the National Incident Database formerly produced by the Mountain Safety Council.
- **Specific WorkSafe data for the adventure activities sector:** WorkSafe publishes a range of data about many sectors on its website. This data includes injury and fatality rates, the number of concerns that have been raised to WorkSafe, and monitor enforcement activities in the sector. Currently specific data on these topics is not provided for adventure activities, but could be developed and published.

Q28	<i>What types of data and information would be useful to publish to help share information about safety issues in the adventure activities sector, regulator involvement and good safety management in the sector?</i>
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8. Other changes

We also want to hear from you any other issues you see in the current adventure activities regime, or other changes you think we can make to improve the management of natural hazards, support better assessment and communication of risks and strengthen the role of the regulator.

Q29	<i>Are there any other issues or potential improvements in how adventure activities are regulated you would like to comment on?</i>
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9. Cost implications of proposals

Some of these proposals will have cost implications for operators, landowners and participants. At this stage, we do not expect these cost increases will be significant compared to an operator's or landowner's existing costs of meeting their duties under the HSW Act and current Adventure Activities Regulations. However, we want to test this through the consultation process and to explore if other costs might be involved in these changes.

Increased costs on operators may be passed on to participants through increased ticket prices. It may be that some participants are willing to pay increased ticket prices to support strengthened safety standards.

Other proposals are more likely to have cost implications for the regulator or government more generally.

Proposals to improve the management of natural hazards

Previous research¹⁸ shows on average, the safety audit cost for operators is estimated to be around \$10,000.00 over a three-year period.¹⁹ Operators are also charged an annual registration fee of \$100. **A preliminary estimate indicates that the package of proposals to improve the management of natural hazards discussed in chapter 4 may increase the cost of an operator's safety audit by 5% to 15% over the three-year period, depending on the size and nature of their operation.**

Proposals to establish explicit land-owner and land manager duties to manage natural hazards will, if implemented, only apply to landowners who are PCBUs under the current law. As PCBUs, this group have existing obligations to ensure, so far as is reasonably practicable, the work and workplaces they control do not create health and safety risks. **Given these existing obligations, we expect the additional costs imposed on land-owners and managers by the proposed new duties will be marginal.**

These costs could be passed on to operators, either through increased operating costs or indirectly through reduced access to land.

The Department of Conservation will carry the greatest proportion of these costs as the majority (around 60%) 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.

Proposals to improve the monitoring, assessing and communicating of risk

We expect any cost increases to operators from proposals to improve the monitoring, assessing and communicating of risk will be minor. Some administrative and audit costs may temporarily increase when operators apply the risk classification criteria to their activities for

¹⁸ MBIE's Targeted Review of Adventure activities regulatory regime and Galloway (2016) New Zealand Adventure Activities Certification Scheme: A Performance Study (available at worksafe.govt.nz/topic-and-industry/adventure-activities/documents-and-resources/)

¹⁹ Audit costs vary depending on the number and type of activities being offered by an operator. Some operators offer multiple activities, while others only one. The location of activities will also affect costs, due to travel expenses for auditors and technical experts. These estimates will be tested through the consultation process.

the first time. However, these costs are unlikely to continue, and parties will become increasingly familiar with the classification process over time.

Published criteria and guidance materials on the risk classification system will be provided by government to support operators through the process.

Proposals to strengthen the role of the regulator

Proposals to strengthen the role of the regulator are unlikely to have significant cost implications for operators, landowners and participants. Operators may face small administrative costs associated with providing regular reporting information to WorkSafe.

Q30	<i>What cost implications will the different proposals have on you or your business? Please be as detailed as possible and provide any supporting evidence.</i>
Q31	<i>What benefits will come from implementing these proposals for you or on your business?</i>
Q32	<i>Would you be willing to pay a higher price to take part in adventure activities, if it meant safety standards were strengthened? Why/why not. If so, how much more?</i>

Next steps and timing

The feedback we receive in this consultation will help us develop policy advice about what changes should be made to the adventure activities regime.

We expect any changes will begin being introduced in mid-2022. Longer timeframes may be applied to some changes, where operators and others may be required to make changes to their current policies and practices.

Once it has been decided what changes should be made to the regime we will consult further on how long operators and others may need to adjust to the new requirements.

MBIE and WorkSafe will also continue monitoring and evaluating the regime. We want to do further research on how well the regime is working, the impact these changes are having, and what further changes may be needed. This research will be published and used to support future reviews of the adventure activities system.

First principles review

In the targeted review, MBIE noted that there were also a number of system-level issues in the design of the adventure activities regulatory system that needed more consideration. These included that:

- the regulatory definition of “adventure activity” is not sufficiently clear
- the regime’s reliance on third party certification bodies may not be sustainable
- third-party certification may not be the most effective way to achieve regime objectives.

The timing for a first principles review examining these matters will take into account the number and scale of changes that come from this consultation process. To provide some certainty and allow us to see the impact of these changes, we want to allow a full 3-year audit cycle before embarking on a first principles review. This means work on the first principles review would begin in 2026.

Annex One: Data on events involving natural hazards

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 multiple fatalities.

The targeted review found 12 types of natural hazard risk that could affect registered adventure activity operations. These included extreme weather (such as high winds or severe temperature changes), water surges and flooding, rockfalls, landslides, avalanches, volcanic eruptions, geothermal hazards and rapids.²⁰

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 because 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 (also known as the Taranaki Outdoor Pursuit & Education Centre coastering tragedy) which claimed three lives in 2012, incidents involving mountaineers in 2003 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.

A comment on data and methodology

Regulations for the adventure activities sector were implemented in 2014.²¹ 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.

So the following data and analysis 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.

²⁰ A fuller explanation of natural hazards and how they interact with adventure activities can be found in Annex 1 of the targeted review.

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

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.²² Because of this limitation, we have adopted fatality data as the best available representation of serious harm in the sector.

Our analysis draws on a range of data sources. We have cross-referenced WorkSafe fatality data with a range of other sources to draw conclusions for the purposes of this discussion.

Data sources include:

- WorkSafe fatality and notifiable event data
- Coronial reports of deaths in the adventure activities sector
- *Risk comparisons for Department of Conservation (DOC) Visitors and Workers (July 2020)*, a report produced by Tony Taig on behalf of GNS Science
- *Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New More Zealand 2009/10 Final Report (June 2010)*, Department of Labour
- *Targeted review of the adventure activities regulatory regime (December 2020)*, MBIE
- media reports of deaths in the adventure activities sector
- media articles on New Zealand natural hazards.

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 data suggests natural hazards should be a priority of the adventure activities regulatory regime

The available data suggests that natural hazards are both a significant source of harm in adventure activities and a major source of risk of catastrophic events. Given these findings, we consider that promoting good management of natural hazards should be a priority of the adventure activities regulatory regime.

The proportion of fatalities in adventure activities related to natural hazards remains high

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.²³ This review examined 39 fatalities in the sectors that occurred over the five-year period between

²² This anomaly is due to the way ACC injury data is collected.

²³ *Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New More Zealand 2009/10 Final Report, 9 June 2010*, Department of Labour, NZ 2010

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 hazard risk, depending on the definition of natural hazard used.

Natural hazards continue to be a significant source of harm. In the five-year period between November 2014 (when the Adventure Activities Regulations took effect)²⁴ 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 22 fatalities from the 2019 Whakaari eruption and one fatality on the Routeburn Track. 26 of the 32 fatalities resulted from natural hazard events.

*Table 1: Summary of adventure activities fatalities notified to WorkSafe: 1 November 2014 to December 2019*²⁵

<i>Year</i>	<i>Month</i>	<i>Summary of incident</i>	<i>Natural hazard event</i>	<i>Registered adventure activity operator</i>
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 Robertson Island.	Yes	Yes
2019	March	One guide and one participant on a 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	20 participants and two guides died in a volcanic explosion or from sustained injuries while on guided tours of Whakaari/White Island	Yes	Mix of registered and unregistered operators

²⁴ With the exception of the accreditation scheme for auditing bodies, which was introduced in late 2015.

²⁵ These incidents are fatalities that have been notified to WorkSafe, confirmed as meeting WorkSafe’s reporting criteria (i.e. excluding deaths from natural causes), and that have been recorded as occurring in the adventure activities focus area. It does not include information on work-related fatalities that occurred within the jurisdiction of other regulators, such as Maritime New Zealand (maritime), the 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 events in the adventure activities sector. “Catastrophic events” are where more than five people die as a result of a single event.

While we have limited historical data to draw from, there appear to be catastrophic events (or near-catastrophic events) related to natural hazards occurring frequently over a 30-year period. These events take place at least every 10 years in the adventure activities sector, resulting in an average of eight fatalities and seven serious injuries per event.

Table 2: Catastrophic or near catastrophic events 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*	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 frequent 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

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

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 catastrophic events that could occur on public conservation land.

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) gas	Volcanic	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 a number of 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. ²⁶ Their paths are identifiable and geology allows the calculation of the likelihood of occurrence.

²⁶ 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 work-related 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 10 work-related catastrophic events in **New Zealand**.

- Six out of the 10 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 10 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

<i>Year</i>	<i>Event</i>	<i>Deaths</i>	<i>Industry classification</i>	<i>Activity</i>	<i>Natural hazard event</i>
1990	Ruapehu snow camping/caving	6	Education and training	Military training camp	Yes
1993	Franz Josef Glacier air crash	9	Arts and recreation	Tourism	No
1995	Cave Creek disaster	14	Education and training	Outdoor recreation course	No
2008	Mangatopopo tragedy	7	Arts and recreation/ Education and training	Adventure activity - recreation	Yes
2010	Fox Glacier air crash	9	Arts and recreation	Adventure tourism (skydive)	No
2010	Pike River mine disaster	29	Mining	Commercial mining	No
2012	Carterton hot air balloon crash	11	Arts and recreation	Adventure tourism	No
2012	Foveaux Strait fishing tragedy	8	Agriculture, forestry and fishing	Commercial fishing	Yes
2016	Kaipara boating tragedy	8	Arts and recreation	Recreational fishing charter	Yes
2019	Whakaari/White Island eruption	22	Arts and recreation	Adventure activity - tourism	Yes

