

**USE OF REGULATORY AUTHORITY IN DISEASE INSURANCE
JURISDICTION AND SOUND MARKETING POLICY CONSIDERATIONS**

Joint Submission from

British Columbia Broiler Hatching Egg Commission

British Columbia Chicken Marketing Board

British Columbia Egg Marketing Board

British Columbia Turkey Marketing Board

January 17, 2014

Contents

I.	Purpose.....	4
II.	Desired Outcome	4
III.	Background	4
	Notifiable Avian Influenza	4
	2004 HPAI Outbreak.....	4
	Lessons Learned	5
	Government Response.....	6
	Poultry Industry Biosecurity/Emergency Response Strategic Plan.....	6
	Risk Analysis	7
	Mandatory Biosecurity	8
	Insurance Product Development.....	8
	A Strategic Plan for Risk Mitigation of Avian Influenza in BC Poultry.....	8
	Shared Risk Management Strategy	9
	Industry Engagement.....	11
	February 2013 Plebiscite	12
	July 2013 Plebiscite	12
	Allied Trades Engagement	13
	Insurance Product Description.....	13
	How the Insurance Works	14
	Who is insured?.....	14
	Premiums and Premium Collection	14
	Claims and Indemnities	14
	Captive Governance.....	15
	Captive Management	15
	Capitalization Requirements.....	15
IV.	Risk Management, Principles/Outcomes Based Approach	17
	Strategic Considerations.....	17
	Accountability Considerations.....	17
	Fairness Considerations	18
	Effectiveness Considerations	18
	Transparency Considerations.....	19
	Inclusiveness Considerations	19
	Use of Regulatory Authority in Disease Insurance	2
	Jurisdiction and Sound Marketing Policy Considerations	
	Joint Submission –2014-01-17	

V. Legal Authority	20
Existing Legal Opinions	20
Affleck Hira Burgoyne LLP	20
Hunter Berardino McEwan Kaardal.....	21
Determination of Legal Authority.....	21
Insurance Outcomes and Purpose.....	21
Legal Authority Issues	22
Cavanagh LLP	22
VI. First Phase Questions	23
Background	23
Question 1.....	23
Question 2.....	27
Question 3.....	30
Question 4	32
Question 5	33
Question 6	34
Question 7	36
Question 8	36
Question 9	37
Question 10	39
Question 11	39
Question 12	41
Question 13	42
Question 14	43
Question 15	45
Question 16	46
Question 17	46
Question 18	48
Question 19	49

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

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British Columbia Broiler Hatching Egg Commission (BCBHEC)

British Columbia Chicken Marketing Board (BCCMB)

British Columbia Egg Marketing Board (BCEMB)

British Columbia Turkey Marketing Board (BCTMB)

January 17, 2014

I. Purpose

- To respond to the British Columbia Farm Industry Review Board's (BCFIRB) June 19, 2013 letter regarding the Use of Regulatory Authority in Disease Insurance – Jurisdiction and Sound Marketing Policy Considerations.

II. Desired Outcome

- Acceptance of the joint submission by BCFIRB as having satisfactorily demonstrated that mandatory avian influenza insurance is within the legal authority and marketing policy of the regulators.

III. Background

Notifiable Avian Influenza

- The British Columbia poultry industry has been subject to three Notifiable Avian Influenza (NAI) discoveries (2004, 2005 and 2009).
- NAI is defined by the Canadian Food Inspection Agency (CFIA) as any low pathogenic (LPAI) H5 or H7 strain of avian influenza or any highly pathogenic avian influenza (HPAI).
- Much has been documented and learned from the three separate responses (Appendix 1 – List of Reports and References).
- Each of the three discoveries resulted in the implementation of the CFIA's, Notifiable Avian Influenza Hazard Specific Plan, which involves control; containment; eradication; repopulation; and surveillance. (Refer to Appendix 2 – CFIA Response Plan for Notifiable Avian Influenza).

2004 HPAI Outbreak

- The 2004 HPAI outbreak in the Fraser Valley severely impacted the British Columbia poultry industry, from producers to processors, allied trades, consumers and communities.
- It disrupted the system of orderly marketing poultry products in British Columbia and was felt throughout the poultry supply management system across Canada.
 - An abridged chronology of the key actions is provided in Appendix 3.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- The outbreak was first reported to CFIA on February 16 and concluded on August 18.
- A total of 42 commercial premises were confirmed as positive for avian influenza.
- Over 1,000 small, non-quota licenced poultry flocks were ordered destroyed.
- On May 20 the depopulation of the last infected commercial flock was completed and on June 4th depopulation activities were halted.
- By June 18, 41 of the 42 infected commercial premises completed cleaning and disinfection which enabled the commencement of the 21-day virus-free standard in the High Risk Region (Abbotsford).
- On August 9 orderly repopulation was commenced within the High Risk Region.
- Two separate reports were prepared that documented the range of the estimated economic impact of the outbreak, \$154.5 million of total sales losses (Federal/Provincial AI Working Group, October 2004) to \$222.6 million total direct impacts to \$391.2 million in total economic impact (Serecon, July 2004).

Lessons Learned

- The poultry industry and the provincial and federal governments held a Canadian Poultry Industry Forum, “Avian Influenza - Lessons Learned and Moving Forward” in Abbotsford October 27-28, 2004.
- Considerable knowledge and experience was gained and it was important that all three parties shared views on what worked, what didn't work and what improvements were needed.
- More than 180 participants from across Canada with representation from all levels of government and industry attended the Forum.
- The Forum had the following objectives:
 - Enable the Canadian poultry industry and regulators to review and learn from the recent Avian Influenza outbreak in British Columbia.
 - Provide support for Canadian industry partners to enhance national biosecurity protocols.
 - Provide support for enhanced emergency management procedures to ensure that any future disease outbreaks are handled in the most efficient manner.
 - Recommend strategies to mitigate future outbreaks and support industry and community economic recovery.
- The expected outcomes of the Forum included:
 - Input into enhanced biosecurity standards for the Canadian Poultry Industry.
 - Input into National Emergency Management Procedures and enhanced Foreign Animal Disease Eradication Support plans.
 - Input into a national industry and community economic recovery program.
- A summary of the recommendations from the Forum are included in Appendix 4.

- The main conclusions of the Forum included:
 - Public health needs to be recognized as an important part of an animal health emergency and that biosecurity needs to be enhanced, not only locally, but nationally as well.
 - There needs to
 - Be a collaborative approach to emergency management;
 - Redesign of the FADES plans need to be redesigned; and
 - “Practice, Practice, Practice”.
 - CFIA confirmed that the confidentiality concerns related to sharing information on infected farms could be addressed in the future.
 - Facilities and protocols for disposal need to be in place and known to all parties prior to the next event.
 - Matters of compensation have to be dealt with in advance of a crisis.
 - Effective on-farm biosecurity was the first step in prevention and containment of any disease outbreak and that there is a need to have national biosecurity standards in place.

Government Response

- In March 2005, the provincial government provided
 - \$1.5 million in funding to support the implementation of enhanced biosecurity and emergency response systems, subject to the BC poultry industry developing a comprehensive strategic plan.
 - \$1.5 million in funding to support specialty bird breeding.
 - \$0.25 million for the development of an enhanced poultry surveillance program and biosecurity/emergency response strategic plan.
- In January 2006, the federal government provided \$1.5 million to support an On-Farm Biosecurity Initiatives (OFBI).
- A complete list of risk management projects funded is included in Appendix 5.

Poultry Industry Biosecurity/Emergency Response Strategic Plan

- In 2005, the poultry industry undertook to develop a strategic plan to access the provincial funding. The BC Poultry Industry Biosecurity Emergency Response Strategic Plan 2005-2007 had 3 goals:
 - The British Columbia poultry industry has a mandatory and auditable Biosecurity Program in place to enhance protection against an infectious disease outbreak, by April 30, 2008.
 - The British Columbia poultry industry has an emergency response management plan in place to handle an infectious disease outbreak, by December 31, 2007.
 - An effective and comprehensive risk management program is in place to provide fair compensation to producers in the event of an infectious disease outbreak, by June 30, 2008.
- A Poultry Industry Advisory Management Committee (IAMC), chaired by industry was established to oversee the implementation of the strategy (Committee membership is provided in Appendix 6).

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Two subcommittees were established; Emergency Response and Biosecurity.
- The initial plan was approved February, 2006.
- The plan is reviewed and revised annually after completion of each year's work plan.

Risk Analysis

- Industry initiated a Risk Analysis of the BC Poultry Industry (Serecon 2007) with objectives to:
 - Identify and assess risk factors which predispose the poultry industry to infectious disease outbreaks;
 - Provide opportunities and risk management options to industry and government;
 - Minimize impact of disease outbreaks on public confidence in poultry produced in BC; and
 - Maintain expansion of domestic and international markets for poultry products produced in BC.
- The analysis concluded that “the risk management principle identified by this comprehensive analysis recognizes the reality that no one single risk management action by itself will be effective. An effective risk management response will necessarily involve an integration of a number of related and complementary actions that collectively will lead to a positive impact on risk reduction.”
- The analysis resulted in the following interrelated recommendations:
 - Poultry industry develops a “universal” bio-security program.
 - Implement an active surveillance program as a mechanism for early detection and to reduce the intensity of animal disease outbreaks.
 - Industry undertakes a series of progressive steps leading to arresting, and eventually reducing the degree of physical and business intensity and density.
 - Industry and government develop and implement an integrated financial management and compensation program; the “shared risk management system” that provides funding mechanisms for recovery and compensation that substantively protects the industry from the significant perils due to disease risks.
 - Develop geographical zones consistent with OIE guidelines that could function independently in the event of a disease outbreak.
- Given the implications of analysis and recommendations, industry created the Risk Mitigation Steering Committee (RMSC) (Committee membership is provided in Appendix 6) and initiated additional studies into insurance options, including the January 2009, Serecon report, Setting the Foundation for Developing Poultry Insurance In B.C.

Mandatory Biosecurity

- Enhanced biosecurity measures within the poultry industry were identified as a critical disease prevention mechanism and for minimizing the risk of spread between farms.
- The industry worked with specialists within the federal and provincial government to develop a biosecurity manual to enhance industry performance in preventing the introduction and spread of disease vectors.
- In 2005, the province and the federal government committed \$1.5 million each to support the implementation of biosecurity and risk mitigation strategies based on the industry Biosecurity/Emergency Response Strategic Plan.
- In the fall of 2006, workshops were held to educate producers on biosecurity and a biosecurity planning and audit program were developed, modelled after the environmental farm planning process.
- In 2007, terms of funding were approved and the BC Poultry Biosecurity Program was open for application.
- In September 2008 all initial Biosecurity Audits were to be completed and all farms had to be in compliance with the orders by December 31st, 2008 the biosecurity protocols were made mandatory by the regulated poultry boards and commission with the support of a November 2009 supervisory approval by the Farm Industry Review Board. Auditing of all registered poultry farms commenced.
- A process for addressing non-compliance or deficiencies in on-farm biosecurity was established along with the introduction of penalties for non-compliance by the poultry boards and commission in February 2010.
- To date there have been no challenges of the mandatory requirements for biosecurity and no penalties have been administered for non-compliance.

Insurance Product Development

A Strategic Plan for Risk Mitigation of Avian Influenza in BC Poultry

- The January 2009 Serecon report provided the design for a strategic approach to guide the assessment of the potential for poultry disease insurance for B.C. and to ensure the most efficient and effective use of resources in pursuing this option.
- Part of the response to the Risk Analysis of the BC Poultry Industry (Serecon 2007) and stemming from the January 2009 Serecon report, the Risk Mitigation Steering Committee developed A Strategic Plan for Risk Mitigation of Avian Influenza in BC Poultry.
 - The Strategic Plan was intended to plan for the implementation of recommended risk mitigation strategies directed at reducing the occurrence and transmission of contagious disease within the BC poultry industry.
 - The recommendations included implementation strategies for:
 - Surveillance
 - North American Animal Disease Spread Model (NAADSM)

- Shared Risk Management
- Universal Bio-security
- Industry Concentration/business intensity
- The Strategic Plan enabled the industry to secure funding through the federal Private Sector Risk Management Partnerships Program.

Shared Risk Management Strategy

- The NAADSM and Shared Risk Management Strategies were focussed on developing a “different approach to compensation/insurance”. Some of the objectives included:
 - Provide the basis for estimating the scope of a potential Avian Influenza outbreak for use in the development of insurance products.
 - Minimize the disincentive for producers to proactively identify Avian Influenza by closely linking compensation and surveillance.
 - Ensure minimal production disruption following a discovery of Avian Influenza by providing predictable, timely and adequate compensation to aid individual producers in re-establishing production.
 - Encourage desirable behaviour by ensuring producers share in the loss and by linking compensation, biosecurity and surveillance.
 - Avoid large unbudgeted costs to producers, marketing boards and governments by creating mechanisms to accumulate funds for compensation and through the transfer of risk to insurance.
- The RMSC used the Strategic Plan and Serecon report and secured funding for product development through the federal government’s Private Sector Risk Management Partnerships Program and engaged the BMS Group, a London-based insurance broker and Endurance Re, a reinsurance company to develop an insurance based product.
- The process included considerable support from veterinarians in the provincial Ministry of Agriculture in the application and use of the North American Animal Disease Spread Model (NAADSM) for evaluating various outbreak scenarios.
- With the assistance of the Ministry of Agriculture risk management staff, Endurance Re was able to take the results of the NAADSM and assess the risk to generate insurance premiums by sector, to cover losses from future avian influenza discoveries.
- A meeting was held on October 22nd, 2010 with representatives from all poultry sectors to review the work done to date by the RMSC.
 - Summaries for each sector were provided, outlining premium pricing, coverage and delivery options.
 - The pros and cons were discussed, and general consensus was to direct the RMSC to continue developing a recommendation on a risk transfer product for industry to review.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- In November 2010, the RMSC issued the first Newsletter to producers in each of the four regulated poultry sectors requesting feedback and support for the insurance based product.
- The RMSC held a further meeting on November 24, 2010 to considering producer feedback and agreement to continue to proceed with development of the insurance product.
- The RMSC also secured a Review of Risk Financing Options to Insure Avian Influenza for the British Columbia Poultry Industry prepared by Marsh Canada (January 2010). This report identified five options:
 - Guaranteed Cost Insurance Plans
 - Group Funded Deductible Plan
 - Reciprocal Insurance Exchange
 - Poultry Insurance Exchange Reciprocal of Canada
 - Captive Insurance Company
- Based on the November 24, 2010 RMSC meeting, the industry agreed that due diligence was required to affirm the recommendation to pursue the use of a captive insurance company to finance the insurance product.
- Agri-Saki Consulting Inc. was engaged to complete a detailed assessment of establishing a Captive Insurance Company, with the objective to:
 - Identify and assess the risks to implementation of the program, including leading meetings with regulators, insurance industry and government.
 - Create greater awareness and understanding within the regulated poultry industry of the insurance product and financing option.
 - Facilitate industry decision on the preferred approach to avian influenza insurance.
- On November 21, 2011 the regulated poultry industry met and affirmed the RMSC recommendation that a captive insurance company was the appropriate vehicle to finance and administer a mandatory insurance-based product for avian influenza and to develop the final product and process for implementation.
 - An industry steering committee chaired by Michel Benoit, Chair of the RMSC and made up of representative from each of the four sectors was appointed to oversee the next phase.
- In January 2012, the RMSC engaged Agri-Saki Consulting Inc. to manage the pre-implementation phase which included
 - Engagement of the former BMS Group consultants now with Aon Benfield to complete the rating methodology and risk assessment work necessary to propose premiums for an insurance product that would cover
 - The gap in market value of birds (difference between market value and *Health of Animals Act* compensation);
 - A dollar value per bird for cleaning and disinfection of infected premises; and
 - A limited business interruption period in the event that scheduled repopulation date was missed.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Engagement of a captive manager (Aon Risk Solutions) to support the development of the application for registration of the captive with the BC Financial Institutions Commission.
- In September 2012, the industry steering committee convened a meeting of the regulated poultry sector to recommend that each association consider a resolution to proceed with implementation of the mandatory insurance through an industry owned captive insurance company.
 - Each association would also appoint an interim director to the proposed captive insurance company to act on behalf of their respective associations to finalize the details for industry consideration.
- In September 2012, the RMSC extended the terms of the Agri-Saki Consulting Inc. engagement to:
 - Provide support to the interim directors of the proposed captive;
 - Establish and implement an industry ratification process, including industry engagement through the use of plebiscites;
 - Initiate an actuarial assessment to provide an independent analysis of the captive and insurance product;
 - Facilitate and support the captive incorporation and registration process; and
 - Finalize the insurance product, premiums and capital requirements.
- The RMSC and industry established September 30, 2013 as the deadline for the pre-implementation phase with October 1, 2013 as the proposed date for the commencement of insurance policies by the captive.
- The poultry industry associations considered the RMSC's recommendation and passed resolutions to proceed with implementation:
 - BC Poultry Association – October 2, 2012
 - BC Turkey Association – October 16, 2012
 - BC Broiler Hatching Egg Producers Association – October 29, 2012
 - BC Egg Producers Association – October 30, 2012
 - BC Chicken Growers Association - November 21, 2012
- Based on the work of the interim directors of the Captive, the poultry associations have considered and passed a resolution to proceed with the incorporation of Captive.
 - BC Poultry Association – September 2013
 - BC Turkey Association – October 16, 2013
 - BC Broiler Hatching Egg Producers Association – October 10, 2013
 - BC Egg Producers Association – October 30, 2013
 - BC Chicken Growers Association - October 2, 2013

Industry Engagement

- Formal presentations were made at producer meetings commencing in March 2011
 - Broiler Hatching Eggs – November 27, 2012
 - Chicken – May 5, 2011 and November 6, 2012
 - Interior – February 2012, January 2013 and June 2013

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Vancouver Island – January 2012 and January 2013
- Eggs – March 4, 2011, March 2, 2012 and October 30, 2012
- Turkeys – March 10, 2011 and October 16, 2012
- Regular newsletter updates providing status updates and specific details with respect to the mandatory insurance have been issued to producers:
 - November 2010
 - December 2011
 - March 2012
 - November 2012
 - January 2013
 - June 2013
- Newsletter update for the allied trades was issued in April 2012 and August 2013.

February 2013 Plebiscite

- A plebiscite was held in February 2013 that asked producers whether or not they supported the association proceeding with the insurance program and if not, what was the reasoning for non-support.
 - Industry-wide response rate was 44.9% with 67.8% vote in support of the associations proceeding with the completion of the pre-implementation phase of the mandatory insurance administered through an industry-owned captive insurance company.
 - The response rate by sector ranged from 39.8% to 73.6%.
 - The support rate ranged from 58.2% to 89.7%.
 - Regional support was less than 50% for both chicken growers and egg producers.
 - A detailed report on the results of the plebiscite is included in Appendix 7.

July 2013 Plebiscite

- A second plebiscite was initiated on June 24, with balloting open for five weeks. The plebiscite is asking producers to vote on two questions:
 - Do you agree with the association implementing a mandatory avian influenza insurance program through an industry owned captive insurance company?
 - Industry-wide response rate was 68.0% with 65.8% in support of the associations proceeding with the implementation of mandatory insurance through an industry-owned captive insurance company.
 - By sector the response rate ranged from 61.7% to 78.8%
 - The support rate ranged from 54.1% to 90.2%.
 - Regional support was negative in chicken and eggs, but positive in turkeys with response rates ranging from 47% to 69.5%.
 - Do you agree with the marketing board/commission to use funds to enable the association to set-up the captive?

- Industry-wide response rate was 67.7% with 68.2% in support of the associations proceeding with the implementation of mandatory insurance through an industry-owned captive insurance company.
- By sector the response rate ranged from 60.9% to 78.8%
- The support rate ranged from 55.2% to 92.7%.
- Regional support results showed increases in the number of votes of support, with the regional egg and turkey association members voting in support.
- The response rate for the second plebiscite was considerably higher than the 45% in the first plebiscite, with all sectors achieving greater than 60% response of its members.
- The overall support was affected by the low level of support in the chicken sector which was slightly lower than the 58% support level in February. All other sectors received an increase in the level of support.
- The detailed report of the second plebiscite is contained in Appendix 8.

Allied Trades Engagement

- The allied trades, in particular, the processors were involved in the development of the British Columbia Poultry Industry Biosecurity/Emergency Response Strategic Plan and the implementation of the key strategies.
- The interim Directors of the proposed Captive hosted an information session with grader, hatchery and processor representatives on September 3, 2013.
 - One processor attended the session and indicated that insurance would increase costs, but was recognized as being part of “the modern agriculture challenge”
 - It was also noted that the smaller provincially-based processors would feel a much greater impact of a discovery than the larger processors who since 2005 have diversified their operating base to other provinces and are now less vulnerable to future discoveries.
- Two other processors subsequently made enquiries, seeking information from the September 3, 2013 session.
- Agri-Saki Consulting Inc. is currently engaging the allied trades to identify concerns and obtain feedback with respect to the mandatory insurance.

Insurance Product Description

- The proposed insurance product that is being offered to producers includes coverage for
 - **Mortality Loss** - The gap in market value of birds (difference between market value and *Health of Animals Act* compensation);
 - **Cleaning and Disinfection** - A dollar value per bird for cleaning and disinfection of infected premises; and
 - **Business Interruption** - A limited business interruption period (up to 8 weeks) in the event that scheduled repopulation date was missed.

How the Insurance Works

Who is insured?

- Each of the four poultry commodity associations will be an equal shareholder in the Captive.
- The four associations will each be the insured and by extension, the producer members of the associations will be insured.
- The insured producer members of the associations are those producer members who are registered with their respective marketing board or marketing commission.
- The marketing board or commission would put in place an order making disease insurance mandatory.

Premiums and Premium Collection

- Based on the annual production volumes provided by the boards and commission, the Captive would set the annual premium for each association.
- The marketing board or commission would provide the association with the total quota allocated to registered producers.
- The associations use their annual premium and divide it by total quota allocated to producers to create a per quota unit premium value.
- The associations would notify their respective board or commission of the per quota unit premium to establish the levy against production to be collected.
- The Captive would collect the annual premium from the associations at the start of the insurance period.
- The boards and commission would be expected to remit to their associations the first year's premium (~\$700,000) for their sector in addition to the initial capital requirements (~\$2,700,000).

Claims and Indemnities

- In the event of CFIA confirming NAI, the "infected premise" would be eligible to file a claim for:
 - **Mortality Loss** which would be a payment based on the number of birds ordered destroyed by CFIA, the age of the bird and the weekly value of the bird.
 - **Cleaning and Disinfection Costs** which is based on a fixed per bird value times the number of birds ordered destroyed.
 - **Business Interruption** in the event that the producer misses the next scheduled placement date, a fixed value per bird per week, up to the earlier of, the date of placement or eight weeks.
- The coverage includes a 10% deductible, so the producer would expect to receive an indemnity payment of 90% of the value of the coverage provided.
- All payment calculations will be based on the CFIA number of birds ordered destroyed.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- In the event of LPAI, payments will be issued upon verification of the claim and paid within 30 days of receipt.
- In the event of multiple HPAI discoveries that may result in total claims exceeding the aggregate loss limits set by the Captive, all claims will be prorated to ensure that the percentage of coverage provided is equivalent to the producer.
 - For example, should total claims equal \$20 million; this would represent \$5 million excess over the Captive's aggregate loss limit of \$15 million. All claims would be paid at 75% of the total.
 - Priority of payment would be to facilitate recovery of the industry. C&D claims would be paid at the outset at full coverage level (90%), with subsequent payments for mortality loss and, business interruption, if applicable, adjusted to fall within the prorated amount payable.

Captive Governance

- The four poultry commodity associations will be the shareholders of the Captive.
- The four associations will appoint a voting director to the Captive.
- The BC Poultry Association will appoint a non-voting director who will also be the chair of the board of directors of the Captive.
- The board may appoint up to two additional non-voting directors to the Captive.

Captive Management

- The poultry industry has retained the services of Aon Risk Solutions, Vancouver, to provide on-going management services to the Captive. The management services include,
 - Maintaining the captive's registration with the BC Financial Institutions Commission;
 - Maintaining the financial accounting of the Captive.
- The Captive directors may also engage other services for claims adjusting, risk management, etc.
- The associations will be expected to maintain a register of producer members including, quota allocations, placement dates and locations of insured premises.

Capitalization Requirements

- Each association as a shareholder will be required to provide \$50,000 in shareholder equity.
 - The \$50,000 times 4 associations provides the minimum \$200,000 in shareholder equity required by the BC Financial Institutions Commission.
 - The associations may look to their respective boards and commission to provide the \$50,000 from existing funds currently held by the boards and commission.
- The Captive initiated an actuarial assessment that provided an estimate of

- The total expected loss of various scenarios - total insurance liability, under the most extreme worst-case scenario has been estimated to be \$30 million.
- Capital requirements for the Captive to satisfy claims and remain solvent - \$2.5 million in capital reserves with excess loss reinsurance in excess of \$500,000.
- Periodic low pathogenic NAI discoveries every three years of \$116,000.
- Using the actuarial assessment and the work of Aon Benfield models, the Captive is proposing
 - To cap loss at \$15 million, which it estimates as being representative of being equivalent to covering a loss event that is similar the 2004 outbreak.
 - To cover the losses, the Captive would establish an initial capital reserve of \$2.5 million.
 - The Captive is proposing to retain the first \$500,000 in losses per event and purchase reinsurance to cover losses exceeding \$500,000 up to a maximum \$15 million.
 - Should the NAI discovery result in losses exceed \$15 million, the industry would look to applying to government for AgriRecovery support.
 - Any payments from this program would have to be taken into account when prorating the amount payable from the Captive.
- The \$2.5 million capital reserve would be:
 - Established by the associations requesting funds from reserves held by their respective boards and commission.
 - Calculated based on the association's share of the total industry risk as measured by the actuarial annual expected loss for the sector divided by the total annual expected loss for the industry. The allocation of risk by sector based on expected losses is as follows:

<u>Sector</u>	<u>Risk Share</u>
Chicken	44.9%
Broiler Hatching Eggs	12.1%
Eggs	36.7%
Turkeys	6.3%

IV. Risk Management, Principles/Outcomes Based Approach

Strategic Considerations

- The mandatory insurance is one component of a four-part integrated poultry industry risk mitigation strategy.
- The poultry industry established the risk mitigation strategy in 2005 after the 2004 HPAI outbreak.
- The Biosecurity/Emergency Response Strategy has been reviewed and revised on an annual basis and has
 - Achieved the successful implementation of a mandatory on-farm biosecurity program in September 2008 with an annual audit process and no penalties having been imposed for non-compliance to date.
 - Biosecurity protocols for allied trades scheduled for implementation in late 2013.
 - Established an industry emergency response plan that was successfully implemented in the most recent 2009 NAI discovery in a turkey operation. A lessons-learned session was held and recommended further changes to the plan that have been incorporated.
 - Worked with CFIA in implementing the Canadian Notifiable Avian Influenza Surveillance System in 2009 following the NAI discovery.
 - Developed an insurance-based product to facilitate recovery of the regulated poultry industry in the event of a NAI discovery.
- The implementation of mandatory NAI insurance for the regulated poultry sector would round out the risk mitigation strategy and facilitate further measures to reduce risk through increased proactive surveillance activities for the early detection of NAI in poultry flocks.
- The implementation of the NAI insurance is consistent with the federal/provincial/territorial risk management policy direction whereby producers and industry assume greater responsibility for managing risk and reducing dependency on government financial assistance.
- The fulfilment of the four-part risk mitigation strategy also contributes to reduce the risk to human health.

Accountability Considerations

- The BC poultry industry as a whole has accepted its responsibility and accountability for managing risk due to a NAI discovery.
- An industry-owned captive insurance company is accountable to its owner members, the poultry associations and their poultry producer members.
- The captive is accountable as well to the BC Financial Institutions Commission to maintain registration as an insurance company.
- Poultry industry associations are responsible for the appointment of directors to the Captive who in turn will be accountable for reporting and interaction with their association and members.
- An insurance-based approach requires discipline by all parties, the insurer and the insured. To achieve the best possible consideration for further transfer of risk

of loss to the reinsurance sector, the industry must be able to quantify and demonstrate its commitment and application of risk mitigation and risk reduction measures (i.e. biosecurity compliance, active surveillance).

Fairness Considerations

- Registered producers have been kept apprised of the development of the mandatory insurance and have had two opportunities to express their views in industry-wide plebiscites in February and July 2013.
- The mandatory insurance will result in no single registered producer that has been declared an “infected premise” holding up the entire poultry industry from resuming the orderly marketing system.
 - In 2004, there were 42 “infected quota licenced premises”. The inability of any one premise being unable to complete the cleaning and disinfection to CFIA standards would have further delayed the commencement of the repopulation of the poultry industry in the Fraser Valley.
 - Accommodations were “negotiated” to enable the orderly repopulation of the Abbotsford area with the “approved” cleaning and disinfection of the 41 “infected quota licenced premises” within the High Risk Region.
 - Repopulation was able to commence on July 10, 2004 despite one outstanding “infected quota licenced premise” in Surrey not yet having been “cleaned and disinfected”.
 - Waiting for the last “infected quota licenced premise” to be cleaned and disinfected would have resulted in repopulation being delayed for a further 6 weeks (August 19), when the Ministerial control area order was rescinded.
- The mandatory NAI insurance will provide coverage to all registered poultry producers.
- Registered producers will know what they can receive if their farm is declared an “infected premise” as a result of a NAI discovery.
- Insurance coverage and premiums are sector specific and reflective of the risks to be covered and corresponding compensation for losses.
- Producers have a predictable and timely response to losses and producers within the same sector receiving the same level of benefits to cover costs and losses from a NAI discovery.

Effectiveness Considerations

- The intended outcome of the mandatory insurance is the BC poultry industry returning to a system of orderly marketing in the shortest time possible to serve and retain markets for BC poultry and poultry products after a NAI discovery.
- As indicated above in the Fairness Considerations, mandatory insurance will ensure that recovery is effected in as short of time as possible by reducing the potential for an “infected premise” to delay in cleaning and disinfection to enable the commencement of repopulation and return to orderly marketing.
- The inclusion of all registered producers will result in the lowest possible premium for all producers.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Minimizing the down time and return to a system of orderly marketing will also benefit the allied trades by minimizing disruption and losses.
- The establishment of an industry-owned captive insurance company will serve to minimize the administrative and premium costs of insurance as well as to ensure that “profits are retained within and for the benefit of the BC poultry industry.
- While premium and coverage are sector specific, the coverage overall is equitable between sectors and reflective of the relative risk of each sector. The captive has worked through a number of actuarial results to establish the relative risk of each sector.
- An insurance-based approach also allows boards and commission to transfer risk of payment for costs and losses associated with a NAI discovery to a third party in exchange for an annual premium. The boards and commission will no longer have to maintain the high level of contingency funds for such an event.

Transparency Considerations

- From the outset, government and industry have worked collectively to ensure transparency of process and outcomes.
 - Invited participation by the representatives of entire poultry industry value chain.
 - Engagement of poultry industry associations, boards and commission from the outset.
 - October 22, 2010, industry workshop on the initial draft insurance product; all sectors represented.
 - November 2010, first Industry Newsletter (sector specific) providing details on the insurance (coverage and premiums).
 - November 24, 2010 endorsement of recommendations to continue development by directors of poultry industry associations, boards and commission.
 - Between March 2011 and June 2013 a total of thirteen formal presentations were made to producers at industry association meetings (specific dates by sectors referenced in the Industry Engagement section of the Background).
 - From November 2010 to June 2013 a total of 7 industry Newsletter updates (sector specific, including one for allied trades) have been issued. (Newsletter dates are referenced in the Industry Engagement section of the Background).
 - March to May 2012 presentations at industry association meetings (all sectors)
 - September 2013 meeting with the allied trades.

Inclusiveness Considerations

- The entire poultry value chain has been involved in the development and implementation of the BC Poultry Industry Biosecurity Emergency Response Strategic Plan 2005-2007.

- The allied trades have been supportive of both the biosecurity measures as well as the insurance initiative.
- Producer engagement as described in the Transparency Considerations and in the Industry Engagement section of the Background.
- All registered producers will be covered by the insurance policy.
- The mandatory insurance as part of the overall risk mitigation strategy will reduce the risk to public health given that avian influenza is a zoonotic disease, affecting both humans and poultry.

V. Legal Authority

Existing Legal Opinions

- The Boards and Commission have two separate and differing opinions with respect to the legal authority of the Boards and Commission to implement mandatory insurance requirements.
 - March 11, 2011 Robert P. Hrabinsky, Affleck Hira Burgoyne LLP on behalf of the BC Turkey Marketing Board (copy included in Appendix 9).
 - February 14, 2013 Claire E. Hunter, Hunter Litigation Chambers, Hunter Berardino McEwan Kaardal on behalf of the BCCMB (copy included in Appendix 9).

Affleck Hira Burgoyne LLP

- The question for opinion was “whether the Board can use retained levy proceeds to pay a premium to an insurer, or to fund self-insurance, for the purpose of insuring producers against economic loss arising from business interruption resulting from disease.”
- The brief statement of opinion stated “the Board may not use levy proceeds to fund an insurance program designed to provide compensation to producers who have suffered economic loss arising from business interruption resulting from disease.”
- The analysis supporting the statement of opinion notes that “subsection 28(t) of the British Columbia Turkey Marketing Scheme refrains from vesting in the Board the power to use levies or charges “to pay costs and losses incurred in marketing a regulated product”.
- The analysis goes further to state that “even if the Board was vested with the power described in paragraph 11(1)(o)(iii) of the Natural Products Marketing (BC) Act, there would still be some doubt about the Board’s ability to use levy proceeds for the described insurance purposes. Specifically, it could be argued (with some force, in my view) that insuring against such losses strays too from the mandate of the Board having regard to the overall purpose of the enactment.”
- Robert Hrabinsky provides legal services to the Broiler Hatching Egg Commission and Egg Marketing Board as well as the Turkey Marketing Board.

Hunter Bernardino McEwan Kaardal

- The question for opinion was “whether the Board is entitled to increase levies in order to collect and use levies from growers for the purpose of purchasing insurance to cover growers’ costs in the event of an avian influenza outbreak”.
- The brief statement of opinion is “In our view, the Board has the authority to increase levies for this purpose”.
- The analysis supporting the statement of opinion cites section 11(1)(o) of the Natural Products Marketing Act “provides that the Board has the authority to set and collect levies or charges from “designated persons engaged in the production or marketing” of chicken, and specifies five uses to which the Board may apply such funds” and the purpose of the Scheme is broadly described as “the purpose and intent of this scheme is to provide for the effective promotion, control and regulation, in any and all respects and to the extent of the powers of the Province, of the production, transportation, processing, packing, storage and marketing of the regulated product within the Province, including the prohibition of such transportation, packing, storage and marketing in whole or in part.”
- The analysis states “in our view, the purchasing of insurance to cover growers’ costs in the event of an avian influenza outbreak is consistent with the broad purpose of the Scheme to provide for the “effective...control and regulation... of the production” of chicken within British Columbia.”
- The analysis goes further to state “we are of the opinion that the Board may set, collect and use levies from growers for the purpose of purchasing avian influenza insurance pursuant to its authority under s. 11(1)(o)(i) of the *Act*.”
- The analysis also states that “the Board may not have the authority to require growers to pay that levy directly to a third-party insurance provider. We understand, however, that the Board intends to actually collect the associated funds in accordance with its authority under the *Act* and to pay for the insurance premium from those collected funds, which as set out above in our view is permissible.”

Determination of Legal Authority

- Authority for the poultry industry boards and commission is drawn from the *Natural Products Marketing Act (the Act)* and the sector specific marketing schemes established under the *Act*.
- The purpose and intent of the *Act* as stated in section 2(1) “is to provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in British Columbia”.
- While the legal opinions above relate to the ability of the boards and commission to collect and use levies for insurance purposes, the more basic question being asked by FIRB is how does mandatory disease insurance fit within the purpose and intent of the *Act*?

Insurance Outcomes and Purpose

- Given the evolution of the strategy and compensation provided under the *Health of Animals Act*, the original outcomes and purpose need to be clearly articulated.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- The intended outcome of the mandatory insurance:
 - The BC poultry industry returning to a system of orderly marketing in the shortest time possible to serve and retain domestic and export markets for BC poultry and poultry products after a NAI discovery.
- The purpose of mandatory insurance:
 - Facilitate industry recovery in as short of time possible from an NAI discovery;
 - Add the necessary discipline and rigor within the regulated poultry sector to manage production consistent with the provisions of the mandatory biosecurity protocols and animal health protocols that will minimize the risk of a catastrophic highly pathogenic disease outbreak;
 - Encourage early diagnosis through active surveillance systems and voluntary submissions for testing.
 - Provide predictable and timely compensation in the event of a loss.

Legal Authority Issues

- Does the intended outcome and purpose of mandatory disease insurance fit within the purpose and intent of the *Act*?

Cavanagh LLP

- The boards and commission have sought legal advice to review these points and to answer the question “Does the intended outcome and purposes of mandatory disease insurance fit within the purpose and intent of the *Act*?”
- The boards and commission approached different lawyers to engage in the review and ultimately selected David Wilson, Cavanagh LLP who has experience with the supply management at both the provincial and national levels for a number of the poultry sectors.
- The analysis concludes:

The “authority vested in the Boards pursuant to the *Natural Products Marketing (BC) Act* can be used to require BC producers to carry AI insurance as a condition of production within the province and to fund that insurance through levies. An argument could be made that the imposition of an AI insurance requirement and any related levy funding would be beyond the statutory authority of the Boards. However, on balance, taking into account the breadth of the legislative scheme, established statutory interpretation principles and the jurisprudence, the better view is that such quota and levy requirements are within the authority of the Boards.”
- The full analysis is included in Appendix 9.

VI. First Phase Questions

Background

Question 1

Describe the origins, nature, location and impact on the poultry industry of the AI outbreak in 2004-05, the losses that resulted and the impact on the production and marketing cycle in British Columbia.

2004 H7N3 Highly Pathogenic Avian Influenza

(Refer to the Report on the Canadian Poultry Industry Forum, December 2004 for a detailed chronology of events.)

Infected Premises

- Premise 1, Broiler breeder farm on Matsqui Prairie
 - Confirmation on February 19, 2004
 - 9,200 birds at 52 weeks of age destroyed
 - 9,030 birds at 24 weeks of age destroyed
- Premise 2, Broiler breeder farm on Matsqui Prairie
 - Confirmation on March 10, 2004
 - 24,000 birds of 4 age classes (3 weeks, 13 weeks, 33 weeks and 45 weeks).
- Premise 42, the outbreak continued to expand in numbers from March 19th through to May 18th with a duck farm on Huntingdon Road.
- A total of 42 commercial premises and 11 backyard flocks were declared infected.
 - All production types, broiler breeders, broilers, layers, turkeys, specialty birds (Asian meat birds, peking duck, squab), ducks and geese.
 - 28 commercial premises and 2 backyard flocks were confirmed infected.
- A total of 410 commercial premises with 14,891,508 birds were depopulated.
- A total of 553 backyard flocks with 18,148 birds were depopulated.

Impacts – Depopulation

- Depopulation of the first infected premise was completed prior to the discovery of the second infected premise.
- Owing to the inability to contain the outbreak, on April 5 the Minister of Agriculture and Agri-Food Canada announced the entire Fraser Valley as the Control Area to be depopulated (15 million birds). It took until May 28 for the depopulation to be completed with CFIA reporting that all infected premises were depopulated.

Impacts – Cleaning and Disinfection (C&D)

- Infected premises are required to clean and disinfect to a higher level standard to minimize the risk of viral presence in the facility. “Infected premises” must be inspected and certified by CFIA.
- Given the expansive nature of the outbreak and the need to ensure that C&D was completed in as short of time possible to enable commencement of repopulation activities, on May 11 an industry committee including the four supply managed sectors, the specialty sector and processing sector agree to share in covering the cost of cleaning and disinfection (C&D) of infected premises to meet the BC Cabinet target date of May 24 for completion of the cull. Industry employs commercial cleaning and restoration crews to supply resources and work with farmers to undertake C&D activities.
- It was not until May 17 that the first of the infected farms passed C&D inspection and it took until June 18 for 41 of the 42 infected quota licenced premises to have completed C&D by passing CFIA inspection.
- One of the infected premises was located in Surrey and required more comprehensive action to fulfil the C&D requirements. By June 11 an agreement reached on destruction of the infected premise in Surrey to meet C&D requirements. This decision enabled CFIA to announce that restocking can begin before C&D is certified on that farm provided industry continues with C&D and gets sign-off.
- The 21 day surveillance period commenced on June 18.

Impacts – Repopulation

- Considerable logistics were required to commence repopulation activities, given that hatcheries were included in the High Risk Region and subject to control measures. As well, given the depopulation of the vast majority of production in the Fraser Valley measures to secure supplies of hatching eggs was also required.
- On June 7, 112 days after confirmation of NAI by the National Centre for Foreign Animal Disease Control (NCFAD) the first placement of broiler hatching eggs in hatcheries were set under condition that all eggs will be destroyed if AI detected prior to the end of the 21 day surveillance (July 9).
- June 28, the first chicks were placed on broiler farms with conditions, 132 days after NCFAD confirmation.
- July 9, 142 days after NCFAD confirmation, the first laying birds were placed in the control zone outside of the HRR and all premises eligible to commence restocking.

Impacts – Trade

- February 19 CFIA notifies Office International des Epizooties (OIE) and United States Department of Agriculture of suspect AI outbreak.
- March 13, OIE was officially notified of HPAI in Canada and the United States closes border to shipments of BC poultry and poultry products. Within two

- days 27 countries had suspended imports from either all of Canada or only British Columbia. The number of countries taking action grew to 46 in total prior to the end of April.
- It was not until August 17 that the United States lifted all trade restrictions on British Columbia and not until October 1, that all trade restrictions were lifted by the European Union (EU).
 - During the course of the outbreak, monitors from the US, Japan, EU, New Zealand visited and inspected British Columbia farm operations.

Impacts – Public Health

- Given that NAI is a zoonotic disease, providing a direct link between animals and humans Health Canada and the BC Centre for Disease Control were notified of the positive AI discovery on February 18, the same day the samples were sent to NCFAD for confirmatory testing.
- The Fraser Health Authority commenced a “Flu Symptoms Watch” on workers/contacts and reports that 5 of 9 exposed workers have reported mild respiratory symptoms on February 19.
- During March and early April it was found that a person involved in culling infected birds reported symptoms; H7 detected in workers; 11 reports of AI associated human illness.
- Health Canada reported the cases of H7 isolations in poultry workers to the World Health Organization (WHO). WHO subsequently issued a global pandemic preparedness warning for Canada.

Impacts – Product Movement/Alternate Supply

- With the announced depopulation of the entire Fraser Valley on April 5, alternate supplies of poultry products were required to meet British Columbia market needs. Working with International Trade Canada agreement was reached on implementing a special supplementary import system to enable BC processors and graders to access product from outside Canada to address the lack of BC supply.
 - Egg supply - April 22, Special Fast Track Supplemental (SFTS) import permits initiated to enable BC egg graders to import 3 million dozen loss table eggs for the initial period from April 5 to June 5. Canadian Egg Marketing Agency manages the imports and the graders pay the BC producer price.
 - Chicken supply – April 28, SFTS import permit authorized to enable BC chicken processors to import 9 million kilograms of eviscerated chicken for the initial period from April 19 to June 12; and July 27, SFTS import permit granted to BC chicken processors to import 3.7 million kilograms of eviscerated chicken for the period from July 25 to September 18.
 - Hatching egg supply - May 5, BC broiler hatcheries complete arrangements for supply of hatching eggs from the USA. August 20, SFTS import permits authorized to enable BC hatcheries to import

936,000 dozen broiler hatching eggs for the period September 12 to November 6. It is forecasted that SFTS will be required into the fall of 2005 for hatching and table eggs.

- It was not until July 30, 90 days after the first SFTS was approved that Fraser Valley chicken returned to being available to chicken processors and 162 days after NCFAD confirmation of NAI.

Impacts – Allied Trades

- Processors and other allied trades were adversely affected by the 2004 outbreak. Problems and impacts included:
 - By March 24, chicken processors had reached maximum storage capacity and begin laying off employees and shutting down processing lines. The BC processors worked with national association to prepare an impact assessment of options to facilitate the movement of birds. On March 30 the processors submitted a provincial proposal regarding movement of fresh and frozen product to CFIA. On April 9, CFIA announced a policy on movement out of the control area of fresh and frozen products was implemented.
 - Total direct economic impact for the processing sector including graders, \$17.45 million
- Hatcheries reported losing \$200,000 per week in early April, with total direct economic impact of \$2.1 million.
- By mid-May two of four major feed mills closed. Total estimated lost sales value of \$73.9 million.

(Note: Direct impact values from Serecon Management Consulting Inc., July 2004 Economic Impacts on British Columbia Poultry Industry Due to the Avian Influenza Outbreak).

Impacts – Economic Losses

- As stated in the Background section, two separate studies were undertaken to document the economic impact of the 2004 outbreak.
 - Refer to Economic Impacts on British Columbia Poultry Industry Due to the Avian Influenza Outbreak, Serecon Management Consulting Inc., July 2004 for specific details.
 - Summary of impacts are as follows:
 - \$222.6 million in direct impacts (loss of revenue plus costs impacts in hatching and processing activities).
 - \$161.1 million in secondary impacts (impacts on wage re-spending and secondary impacts on other industries, both upstream and downstream in the economy).
 - \$7.5 million in one-time losses (costs for cleaning and disinfection, biosecurity, industry coordination and public relations incurred by industry).
 - **\$391.2 million** total economic impact.
 - Impact by sector (note chicken included broiler breeders):

- Chicken 51.2%
- Layers 41.0%
- Turkeys 3.7%
- Specialty Birds 4.1%

Impacts – Government Costs

- The operational costs of the 2004 outbreak to the federal government was \$73 million, of which \$66.75 million was compensation paid to producers for costs associated with birds ordered destroyed.
 - The amounts above do not include any Disaster Financial Assistance Program payments to the province.
- The Provincial Emergency Program (now Emergency Management BC); the Ministry of Agriculture; the Ministry of Health and Fraser Health Authority were actively involved in the 2004 response.
 - The Province claimed \$2.2 million in expenditures incurred by the Provincial Emergency Program to CFIA. These claims were made subsequent to the date for which the federally reported costs were reported and therefore represent an additional cost.
 - The costs do not include:
 - Staff time of the Ministry of Agriculture.
 - Ministry of Health and Fraser Health Authority staff time and other related costs.
- Local governments were also directly involved, in particular through the local police in traffic control and management. No estimates of the costs are available.

Question 2

Describe the measures that were taken within the poultry industry and by the poultry boards during and in the aftermath of the outbreak (for example, quota leasing) to minimize the interruption in the production and marketing cycle. Describe the extent to which those measures did and did not succeed in maintaining the provincial production and marketing cycle for each commodity, and any significant unintended benefits or adverse consequences that arose from the measures that were taken.

Overall Industry Response

- The depopulation of poultry flocks stopped at the Vedder River, sparing operations in Chilliwack.
- The four poultry sectors worked collaboratively together in responding to the outbreak, in particular,
 - The sectors had proposed a pre-emptive cull of all commercial barns in the High Risk Region after the discovery of the second positive operation.
 - The sectors worked with processors to develop a strategy and systematic approach to cleaning and disinfecting “infected premises”.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- FIRB and the Boards worked with the National Farm Products Council to develop proposals to enable special supplementary import permits.
- Boards, commission and processors worked collectively together to facilitate policy on movement controls for live birds and processed products.

The sector specific information below is sourced from the October 18, 2004 Federal/Provincial AI Working Group – Avian Influenza Economic Impact Analysis on the Poultry Industry (Fraser Valley, BC) and augmented with input from the boards and commission staff.

Broiler Hatching Egg Commission

- The Fraser Valley represents 100% of the broiler hatching egg production in British Columbia.
- An estimated 362,464 broiler breeders were depopulated, representing 60% of the total number of broiler breeders.
- A further 160,000 replacement pullets and pre-lay hens were destroyed.
- The Commission was able to lease quota to other provinces to ensure a supply of hatching eggs would be ready once the Fraser Valley was able to repopulate.
- The last placement was in June 2005 and it took until 2006 to re-establish the pre-2004 level of production.
- Arrangements were made through hatcheries to import hatching eggs from the United States. The eggs sourced were at a lower price than BC produced hatching eggs enabling hatcheries to recover some of the lost revenue during the shut-down phase.

Chicken Marketing Board

- The Fraser Valley in 2004 represented approximately 88% of the broiler production in the Province.
- An estimated 650,172 broilers were depopulated, representing 6% of the total Fraser Valley broiler population, based on an eight-week production period.
- BC's allocation was leased out to other provinces for approximately 16 weeks at \$0.15 per kilogram live weight.
 - The funds were remitted to the BCCMB and were used to defray some of the costs associated with the outbreak including compensation to growers for lost production.
 - The product grown under this program known as "Chickens West" was eviscerated, shipped to BC processors at a set price per kilogram, and used by the processors to maintain their customer base during the outbreak.
- The Chicken Board provided compensation for loss of profit margin as a matter of fairness and equity to growers that were unable to ship during the last half of period A-58 and the first half of period A-60.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Period A-59 was lost to all growers in the Fraser Valley, so all growers were affected equally and no compensation was provided by the Board for that period.
- The Board increased its normal levy for a period of two years to cover the Board's costs of managing the AI event as well as to establish a contingency fund for costs of future disease events.
- Processors were able to bring in imported eviscerated chicken under a special supplementary import permits. This provision did not have any benefit or impact to chicken producers.

Egg Marketing Board

- The Fraser Valley in 2004 represented approximately 85% of all egg production in BC.
- An estimated 1.6 million layers and layer replacements were depopulated, representing 65% of the Fraser Valley layer and layer replacement population.
- The Board did not lease quota to other provinces, rather, the Egg Farmers of Canada worked with BC graders to provide eggs sourced from the United States to meet British Columbia market demand.
- The Board established a levy to cover the Board's costs of managing the AI event as well as to establish a contingency fund for costs of future disease events.
- Graders were provided eggs sourced by the Egg Farmers of Canada from the United States.

Turkey Marketing Board

- The Fraser Valley represented approximately 95% of the total BC turkey production in 2004.
- Two turkey breeder operations with 22,199 birds were depopulated in 2004. This represented 100% of the turkey breeder population in BC.
- A total of 215,354 turkey meat birds were depopulated.
- Almost 1.4 million kgs of allocation was leased out to growers in Alberta and Saskatchewan at a rate of \$0.25/kgs. This production was leased to the same processor that lost the production volumes in BC. When the leased production is taken into consideration, the BC Turkey Growers were not under produced in the 2004/2005 quota year.
- Because all the breeders and the hatchery were depopulated, all growers in the Province were impacted by the event. A new revised allocation percentage was determined for all the growers once production was possible and the payments from the leases were distributed to all the growers.
- The Board maintained a levy of \$0.04/kg even though the production in the Province increased by 27% between 2004 and 2006. Levy surpluses, up to \$750,000 were collected and maintained in a reserve fund only to be used in contagious disease events.

Government Programs

Question 3

Describe the terms, conditions and operation of any government (federal and provincial) programs that currently exist for producers respecting a future AI outbreak related to (a) cleaning and disinfecting costs; and (b) business losses. Your description should include reference to any compensation program, loan program or taxation program available in the event of losses due to AI.

Health of Animals Act, Compensation for Destroyed Animals Regulation

- Section 51 of the *Health of Animals Act* states, “The Minister **may** order compensation to be paid ... to the owner of an animal that is ...destroyed under this Act ...” (emphasis added).
- The *Act* enables but does not compel the federal government to pay compensation. The compensation if paid, is limited to the “market value, as determined by the Minister” and for “costs related to the disposal of the animal”.
- The *Act* does not pay for costs of cleaning and disinfection or future losses due to delays in restocking.
- In 2004, the federal government paid in excess of \$66 million in compensation for birds ordered destroyed.

Canada-British Columbia AgriStability

- At the time of the 2004 outbreak, the AgriStability Program was called the Canadian Agriculture Income Stabilization Program (CAIS). The program has evolved from its launch in 2003.
- CAIS is a margin-based program, in other words, farm revenue less farm costs equals an annual margin. This annual margin is compared against a historical five-year Olympic average (remove the high and low) and if the current year margin fell greater than 15 per cent below the historic margin, a payment was triggered.
- Poultry producers were eligible for CAIS as a result of AI. From available program information, the poultry industry did realize benefits under CAIS.
 - Applications from and payments to poultry and egg producers increased significantly over the 2003 program year payments in 2004 and 2005.
 - The number of poultry and egg producers with completed applications nearly doubled in 2004, however, only 23.9% of the completed applications received benefits, of which close to 60% were supply managed operations.
 - Non-supply managed poultry operations also received considerable benefit under the program.

- In recent years the number of poultry operations registered for the program has declined.
- The program did not assist all poultry farmers, nor was the support the same for all who did receive support.
 - The program responds either through a decrease in farm revenue; an increase in farm costs; or a combination of both. In the case of poultry producers, where there was an extraordinary increase in cost due to cleaning and disinfection, a portion of that cost may be covered by CAIS. If the margin decline fell between 15 and 30% the level of support provided was 70% of the decline. For margin declines from 31 to 100%, the support level was 80%. If the margin decline exceeded 100% the support level drew back to 60%.
 - Assistance is also affected by when in the production year or fiscal year the loss is experienced.
 - There was a payment cap of \$3 million per farm operation. The cap did not come into play for any producers receiving support.
 - The variable nature of coverage of loss by the program does not instill sufficient confidence in the industry to adopt a more proactive surveillance system, nor to increase the number of voluntary sample submissions to the Animal Health Laboratory. Submissions to the Animal Health Laboratory remain at 40 percent of the pre-2004 numbers of poultry industry submissions.

Canada-British Columbia AgriInvest

- This federal/provincial cost-shared program which provides government matching contributions to producer deposits is based on Allowable Net Sales (ANS) of farm commodities.
 - Revenue from supply managed commodities is not eligible for ANS calculations.
 - The AgriInvest Program guidelines result in the program not directly assisting with disease losses in the regulated poultry sector.

AgriRecovery

- AgriRecovery helps producers with the cost of activities necessary for recovery following natural disaster events. The program was not in place in 2004.
- The AgriRecovery Framework allows governments to collaborate, on a case-by-case basis, to:
 - Assess the impacts of natural disasters (e.g., disease, pests, weather events, etc.); and
 - Help affected producers with extraordinary costs of recovery where there is need for assistance beyond existing programs.
- AgriRecovery is intended to complement, rather than duplicate or replace, existing programs.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- AgriRecovery provides a framework response and does not guarantee a response. A case must be made for each situation.
- The program is not intended to provide assistance for recurring events.
- The current thinking of the captive regarding mandatory Avian Influenza insurance is to limit the captive's losses at a predetermined level. Losses exceeding the loss limit would not be covered and fall on the producers. The poultry industry believes the rationale exists to make a case for the application of AgriRecovery for an extreme catastrophic loss due to Avian Influenza that would fill in the gap created by the captive capping its loss exposure.

Other Programs

- There were no loan or taxation programs that were available to farmers in 2004.
- The poultry industry is not aware of any loan or taxation programs that will provide assistance for the losses incurred from NAI. While C&D costs are deductible for tax purposes and are not viewed as being of benefit to the producer, or contributing to offsetting the losses of NAI.

Question 4

Describe the length of time it took producers in the various industries to return to production following the last AI outbreak.

Broiler Hatching Eggs

- Not all hatching egg farms were depopulated, which lessened the overall impact on repopulation.
 - A total of 27 farms with an estimated 529,058 broiler breeders were depopulated, representing 60% of the total production.
- The need to grow replacement pullets also added to the delay in getting back into production.
- The first breeder chicks were placed on July 15, 2004.
- The last set of breeder chicks were placed in June 2005, nearly 12 months later.
- It was in early 2006 that the sector returned to pre-2004 production.

Chicken

- Given the short production cycle and the ability to import hatching eggs from the United States, re-establishing broiler production took the shortest amount of time. If the industry was not able to import hatching eggs, the re-establishment process would have been much longer in duration.
- An estimated 650,172 broilers were depopulated, representing 6.0% of the total Fraser Valley broiler population.
- The first broiler farms were back into production on June 28, 2004.
- The first set of BC broilers available to processors on July 30, 2004.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- The last broiler farm was back into production by August 28, 2004.
- It took until 2005 for the sector to return to pre-2004 production.

Eggs

- An estimated 1.6 million layers and layer replacements, representing 65% of the Fraser Valley layer and layer replacement population.
- The first layer farms placed birds on July 9, 2004.
- The last layer farm commenced production in September, 2005.
- It took until 2009 for the sector to return to pre-2004 production.

Turkeys

- Two turkey breeder operations with 22,199 birds were depopulated in 2004. This represented 100% of the turkey breeder population in BC.
- A total of 215,354 turkey meat birds on 12 farms were depopulated.
- It took 3 to 4 months in order for the industry to return to normal after the AI event.
- The grower losses as a result of the event were calculated as \$2.43 million.
- When taking the inter-provincial leases into consideration, most farmers were able to produce their allocation in the 2004/2005 Quota Year.
- This was primarily due to the following:
 - The timing of the start of the quota year (May) and the yearly allocation process allowed ample opportunity for growers to re-grow their lost production.
 - The availability of hatching egg supply from other locations was instrumental in a rapid re-population process.
 - Finally, because most turkey demand occurs near Christmas and Thanksgiving, this allowed enough time for lost production to be made up.
- If the AI event had occurred later in the year, the impacts would have been much more devastating on the industry.
- It is unlikely that the industry would fare so well if the AI event of 2004 occurred in 2013. This is because of the increases in production, the greater demand for further processed turkey products required all year long and the fact that there are 6 processors/brokers in the Province instead of one.

Question 5

How effective were the government programs that existed in 2004-05 in assisting producers to return to production?

- The government programs per se did not assist in producers returning to production.
- The boards and commission were responsible for scheduling producers back into production taking into consideration market demand and balancing supply with such demand.

- The assistance provided by government programs assisted with the lost revenue from production through the production cycle they were in, and based on historic reference margins may have compensated for future revenue loss from cycles missed.
 - The CAIS program would have provided a limited measure of assistance owing to the reduced level of annual revenue potentially reducing historic margins, however, if the producer was not in production, they were not incurring costs either.
 - CAIS was linked to the producer's fiscal year and as such a producer could not apply until after the close of the current fiscal year.
 - Available data indicates that only a small percentage of those who applied received benefits (~25%).
 - CAIS was not predictable in whether or not the producer would qualify for a payment nor was it timely in providing payment, in some instances up to 2-years after the event.
- Return to production is established by the Board or Commission in accordance orderly marketing principles that ensure that the supply of BC poultry products matches BC demand.

Question 6

How did the time it took for individual producers to return to production compare with the time it took each poultry sector to return to overall provincial production in view of the interim measures (e.g. leasing) put in place in the wake of the outbreak?

Hatching Eggs

- In the response to question 4, it took until June 2005 for the last hatching egg producer to place breeder chicks.
- It took the hatching egg sector until early in 2006 to return to pre-2004 production levels.
- The BHEC used quota leasing measures to augment provincial production.
 - Quota leasing contributed to the hatching egg sector to realize pre-2004 production levels by early in 2006.
- The hatcheries primarily relied on imported eggs and chicks from the United States to facilitate resumption of broiler production in BC.

Chicken

- In the response to question 4, it took until August 28, 2004 for the last chicken grower to return to production.
- It took the broiler sector until 2005 to return to pre-2004 production levels.
- The CMB only used quota leasing to other provinces during the actual outbreak to maintain supply of eviscerated chicken to processors.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- The hatcheries primarily relied on imported eggs from the United States to facilitate resumption of broiler production in BC to pre-2004 levels by the fall of 2004.
- Processors were able to secure supply of eviscerated chicken from the United States to supply BC markets. This allowed processors to operate close to pre-2004 levels from the time of depopulation until the first shipments from local farms that began in mid-July 2004.
 - The supply of imported eviscerated chicken continued until mid-July 2004.

Eggs

- In the response to question 4, it took until September 2005 for the last egg producer to place the flock.
- It took the egg sector until 2009 to return to pre-2004 production levels.
- The EMB's repopulation schedule was directed at achieving the same production mix between traditional and specialty products.
- The EMB did not expect that consumer confidence had been eroded and the demand for eggs would be less than the supply prior to 2004. The effect was an oversupply of specialty eggs on the market, with graders downgrading specialty eggs to brown eggs. The BC industry was also long on supply of white eggs, but CEMA had the ability to take care of white eggs through the industrial products removal program.
- A significant portion of the organic market was lost to the prairie provinces.
- The EMB did not use quota leasing measures to augment provincial production.
- The graders primarily relied on Egg Farmers of Canada importation of eggs from the United States to supply markets in BC. This allowed graders to meet BC market demand.

Turkey

- In response to question 4, it took 3 to 4 months for the industry to return to normal after the AI event.
- The grower losses as a result of the event were calculated as \$2.43 million.
- When taking the inter-provincial leases into consideration, most farmers were able to produce their allocation in the 2004/2005 Quota Year.
- This was primarily due to the following:
 - The timing of the start of the quota year (May) and the yearly allocation process allowed ample opportunity for growers to re-grow their lost production.
 - The availability of hatching egg supply from other locations was instrumental in a rapid re-population process.
 - Finally, because most turkey demand occurs near Christmas and Thanksgiving, this allowed enough time for lost production to be made up.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- If the AI event had occurred later in the year, the impacts would have been much more devastating on the industry.
- It is unlikely that the industry would fare so well if the AI event of 2004 occurred in 2013. This is because of the increases in production, the greater demand for further processed turkey products required all year long and the fact that there are 6 processors/brokers in the Province instead of one.

Question 7

How if at all have these government programs changed since the AI outbreak of 2004-05?

Health of Animals Act, Compensation for Destroyed Animals Regulation

- Coming out of the 2004 Canadian Poultry Industry Forum, the federal government revised the maximum bird values under its regulation.
 - The changes narrowed the gap between the calculated market value and the compensation value paid.
- In 2010, the federal government announced further improvements in the maximum value for birds ordered destroyed.
 - The changes are not yet finalized, but will further narrow the gap and reduce the time in which the compensation value and the market value converge.
- The *Health of Animals Act* still does not compensate for C&D nor business interruption, i.e. losses resulting from missing a scheduled repopulation date.

Canada-British Columbia Agri-Stability Program

- In 2013, with the signing of the new federal/provincial Growing Forward 2 Agreement, the support levels for Agri-Stability are lower than what they were under CAIS in 2004.
 - To trigger a claim, the current margin must fall to greater than 30% of the historic margin. In other words, it will take a greater loss in farm revenue or increase in farm costs to trigger a claim under the new rules.
 - The level of support if triggered will be 70%.
- It is likely that even fewer poultry producers would qualify for Agri-Stability assistance under current program guidelines than in 2004.
- Despite improvement to the advanced payment option, the program remains unpredictable as to whether the producer will or will not qualify for payment as well as the timing of the final payment.

Question 8

Do the current programs provide for compensation funds paid prior to any insurance claims? If so, how would that impact a producer's return to production?

- The *Health of Animals Act* compensation does not take into consideration any other program payments. The compensation is intended to pay for the market value of the animal and costs to destroy and safely dispose of the infected animals.
- The Agri-Stability Program takes into consideration any government payments made into the calculation of the current year's margin.
 - The *Health of Animals Act* compensation would be considered farm revenue and would reduce the impact on the farm's current year margin decline and reduce any potential claim payable under Agri-Stability.
 - The program treats Agri-Insurance payments as farm revenue for purposes of calculating current margins. It is assumed that the Agri-Stability program would take into consideration any insurance payments as farm revenue, thereby further reducing the size of any potential claim payable under Agri-Stability.
- As stated in the response to Question 5, it is unlikely that either program assist producers in returning to production.
 - The return to production is determined by the actions of the "infected premise" and decisions of the boards or commission with respect to scheduling of repopulation consistent with managing supplies of product.
- Return to production is established by the Board or Commission in accordance orderly marketing principles that ensure that the supply of BC poultry products matches BC demand.

Private insurance

Question 9

What private insurance products are currently available for producers relating to a future AI outbreak, what do they cover (e.g., cleaning and disinfecting costs alone, business losses alone, or both?) and what do they cost?

- The United Kingdom, Germany and China have mature programs offered by the private sector, however they operate differently from that proposed in British Columbia.
- No insurance company offers cover for an entire industry, insurance is voluntary and only available to individual farms.
- Any private insurance requires the farm to fill in a questionnaire and the insurer has the right to not accept the risk.
- Some insurance policies will provide coverage where government slaughter is involve, but most will not.
- Most policies will have a limit in respect of value per bird at a percentage below market value and per farm. This represents a different structure than what is being proposed by the BC captive.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Rates and coverage are not easily accessed from insurance providers however the estimate is that they range from 4 to 8%; for example \$100,000 in coverage would cost \$4,000 to \$8,000. The BC captive rates are proposed to be well under 2%.

a10k Inc.

- a10k Inc. based out of Ontario provides insurance for farms and other property and casualty products.
- Through Hub International, a10k announced in October 2013 that it is offering a poultry disease insurance product to cover mortality, business interruption and cleaning and disinfection for Highly Pathogenic Avian Influenza, Salmonella Enteritidis, Avian Infectious Laryngotracheitis and Newcastle Disease.
- The proposed disease insurance package:
 - Is available to broilers and layers at this time.
 - Will not cover low pathogenic Avian Influenza.
 - Will not take on the full British Columbia regulated poultry industry risk.
- The policies will have a limit in respect of value per bird; a set maximum value for cleaning and disinfection and a dollar value deductible per cover and per incident. This represents a different structure than what is being proposed by the BC captive.
- The insurer may refuse to cover a farm for any reason.

Poultry Insurance Exchange Reciprocal of Canada (PIE)

- A reciprocal is defined as “a plan of insurance by which each member of a reciprocal exchange acting through an attorney-in-fact becomes an insurer of and is insured by every other member”.
- The PIE was created out of a need of the Ontario broiler hatching egg industry due to producers suffering a number of losses due to salmonella infection in their flocks.
- In May 2009 the PIE received its licence from the Ontario insurance regulator to operate. The insurance program for salmonella in hatching eggs commenced on January 1, 2004.
- The PIE also is acting as the insurance provider for Ontario egg producers as part of the National Salmonella Enteritidis program.
- The PIE has offered to be an insurance provider for NAI, but is not currently registered to operate in British Columbia. As a reciprocal, it does not require mandatory participation, but requires individual producers to become subscribers. The requirements of a reciprocal are quite different than a captive, in that the subscribers of a reciprocal carry the liability for losses, whereas the captive is liable for losses incurred, not the individuals insured.
- The industry had considered PIE and a reciprocal as part of its due diligence in considering proceeding with a captive.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Given the nature of the industry risk in British Columbia and the desire by industry to have an insurance company, not the individuals insured carry the liability for losses was an important consideration to proceeding with the captive.
- As well, British Columbia is the only province in Canada that has legislation enabling the establishment and operation of a captive insurance company.

Egg Farmers of Canada (EFC) – Risk Management Fund (RMF)

- The EFC has established a RMF (March 2013) to provide coverage to registered egg producers for the difference between the market value and the *Health of Animals Act* compensation and for cleaning and disinfection of “infected premises”.
- The RMF is funded through a national levy of 0.1 cent per dozen eggs.
- The captive is working through the BCEMB with EFC to reconcile any overlap and duplication impacts of the RMF and the captive to BC egg producers.

Question 10

If a producer purchases private insurance, how would such purchase affect a producer’s return to production?

- Given that private insurance
 - Is more expensive than what is proposed by the captive
 - Does not cover costs of cleaning and disinfection
 - Does not cover LPAIit is unlikely that it would contribute to the producers return to production.
- Return to production is established by the Board or Commission in accordance orderly marketing principles that ensure that the supply of BC poultry products matches BC demand.

Rationale for regulatory action

Question 11

Why do the boards consider that, despite existing government and private insurance products, and despite the measures put in place to restore the provincial marketing cycle in 2004-05, the boards’ regulatory action is necessary to satisfy the purposes of s. 2(1) of the *NPMA*:

2(1) The purpose and intent of this Act is to provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in British Columbia, including prohibition of all or part of that production, transportation, packing, storage and marketing.

- Existing government programs and private insurance will not facilitate a timely recovery of the industry or a timely return to orderly marketing within the schemes.
- As demonstrated by the 2004 NAI, orderly marketing was severely disrupted and took over 5 years for all regulated poultry sectors to return to pre-2004 production levels. It took over two years for some producers to be back in production.
- Mandatory disease insurance is in keeping with the “control” of “production” purpose by facilitating recovery the industry in the shortest time possible and resumption of orderly marketing by eliminating cleaning and disinfection cost barriers to the producer of the “infected premise” that manifest in 2004.
- Producers within the “infected zone” are beholden to actions or inactions of the “infected premise” in the event of an NAI, in particular with respect to the ability to restock operations until such time that the “infected premise” has met the CFIA’s cleaning and disinfection (C&D) requirements leading to the removal of the infected premise declaration.
 - Any inactivity on the part of the “infected premise” disrupts the orderly marketing of the particular scheme.
 - Given the close proximity of operations, the impact is not limited to one production type. In some instances all four sectors ability to maintain orderly marketing of production can be negatively impacted by the actions or inactions of the “infected premise”.
 - CFIA does not compensate for C&D. Mandatory disease insurance will ensure that C&D can take place as soon as the virus has been inactivated by covering 90% of the cost of C&D.
- As well, the provision of insurance to address costs and losses of a NAI, will encourage producers to more readily accept and participate in active surveillance systems to effect an early response, containment and eradication of any NAI discovery. The implementation of the CANAIS system after the 2009 NAI discovery came as a surprise to industry and was not well received given the extraordinary costs and losses that would be borne by an “infected premise” with a NAI discovery.
- The boards and commission used contingency funds in response to the 2004 HPAI and in subsequent NAIs. As well the boards and commission put in place levies to establish contingencies and designated funds to cover “costs and losses” associated with a disease event. Given that there have been no challenges to the collection of levies for these purposes, it is felt that by extension, the use of levies for mandatory insurance as a risk transfer mechanism to cover such “costs and losses” were also within the legal authorities as provided by the *NPMA* and schemes.
- The July plebiscite sought producer feedback on the use of current levy funds held by the boards and commission for the purposes of establishing the captive insurance company. The levels of support were positive in all sectors. (See July Plebiscite section for plebiscite wording and result details by sector.)

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- The reliance on private insurance will be more costly than the use of the BC captive insurance.
 - Private insurance builds in a “profit” load into the premium cost.
 - Private insurance adds a premium surcharge to those who purchase insurance following a discovery.
 - The BC poultry industry does not control the “costs” of insurance.
- The boards and commission sought further legal analysis to support this rationale. (See Cavanagh LLP in Appendix 9 Legal Opinions for more details.)

Question 12

How, if at all, has this issue been addressed from a regulatory perspective by provincial commodity boards in other provinces and what is the current status of those regulatory measures in those provinces? Which provinces require mandatory insurance? Which use cleaning and disinfecting standards? What other regulatory approaches are used?

- Given that there have only been three other NAI discoveries in Canada outside of British Columbia and it has been limited to an individual farm in each province, the poultry industries in the other provinces have not experienced the extent of impact and implications as has the BC industry.
- Most provincial boards are watching the proceedings in British Columbia with respect to the development of an insurance product and will base their decisions on the results and outcomes of the BC experience.
- The federal government undertook with the support of industry the development of biosecurity protocols for poultry following the BC experience.
- The National Avian On-farm Biosecurity Standard is modelled after the BC standard.
- All provinces, except for British Columbia have adopted the National Standards as voluntary, not mandatory standards.

Broiler Hatching Eggs

- The Ontario Broiler Hatching Egg and Chick Commission implemented a mandatory insurance requirement in their Terms and Conditions – Producer Obligations. The requirement states “To insure the said flock at its expense for loss occasioned by all insurable perils including Mycoplasma gallisepticum (M.g.), Mycoplasma synoviae (M.s.), Salmonella enteritidis (S.e.) and Salmonella typhimurium DT104 (S.t.D.t.104), fire, wind, power failure, flood and suffocation during the time that the flock is on the premises of the Grower. This coverage shall include the value of the flock and the cost of feed and medication supplied for the flock. The Grower shall not be responsible or liable for losses covered by the insurance of the flock owner.”

Chicken

- Manitoba has mandatory insurance requirements for poultry diseases.

Eggs

- Most provincial egg boards have established mandatory disease insurance requirements as part of the implementation of the national Se insurance program through the Canadian Egg Industry Reciprocal Alliance.

Turkeys

- No other province is advanced as British Columbia with respect to comprehensive disease insurance. Manitoba has started to look at insurance. Ontario had explored prior to the initiation of the risk rating work in British Columbia. It is not expected that anything will be put in place in the near future.

Question 13

Apart from the current proposal to impose levies for the purposes of capitalizing and funding a captive insurance company, what other regulatory options did the boards consider, how did they differ from the current proposal, and why were they rejected?

- The boards and commission instituted levies for replenishing contingency funds or to establish disease compensation funds immediately following the 2004 HPAI.
- Given the interdependence of the four poultry sectors and that a single NAI discovery, particularly in the Fraser Valley will impact all sectors, the boards and commission have supported their producer associations looking at ways to transfer the risk from the boards to a private insurance company.

Broiler Hatching Eggs

- The Commission has requested BCFIRB authorization to access to funds resulting from the sale of quota to Ontario for use in a disease loss event or to fund the insurance program.

Chickens

- Levies were increased for a two-year period to replenish their depleted Contingency Fund with the intent to have sufficient funds to cover disease losses and costs.
- The Board has \$2.4 million available in its Contingency Fund to cover a disease loss event.

Eggs

- Levies were increased to replenish their depleted Contingency Fund with the intent to have sufficient funds to cover disease losses and costs.
- The Egg Farmers of Canada has a Risk Management Fund in place to cover losses from NAI. BC producers are contributing 0.1¢ per dozen eggs in the national levy for purposed of the Fund.

Turkeys

- The Board maintained a levy of \$0.04/kg even though the production in the Province increased by 27% between 2004 and 2006. Levy surpluses were collected and maintained in a reserve fund.
 - The Board's fund contains \$750,000 and guidelines are in place for the fund in the event of a disease event.
- Based on the April 19, 2013 meeting of poultry regulatory authorities and the BCFIRB, the regulated poultry industry, including the boards and commission have considered suggestions to amend the mandatory biosecurity standards to require an “infected premise” to complete C&D within a specified time frame.
 - Boards and commission have not pursued the above approach given:
 - The question of use of regulatory authority in mandatory biosecurity being subject to judicial review
 - The legal opinions provided to date on mandatory insurance
 - The degree of industry engagement undertaken on the subject of mandatory insurance has far exceeded that for mandatory biosecurity and the positive support expressed by those who have registered a vote through the two plebiscites
 - The risk of a NAI discovery has increased with the on-set of active surveillance through CANAISthe risk of challenge has been assessed as being no greater than the mandatory biosecurity standards (to which there has been no challenges to date).
 - The RMSC requested that the Emergency Response and Biosecurity Committee assess the merits of proposing the inclusion of mandatory requirements related to the cleaning and disinfection of infected premises in the next review of the Biosecurity Program in the fall/winter of 2013/14.

Question 14

Without limiting the other options the boards may have considered, what is the boards' assessment of the following regulatory options in terms of their ability to satisfy the purposes of s. 2(1) of the *NPMA* with reference to a potential AI outbreak?

(a) More rigorous and enforced cleaning and disinfecting standards.

- The boards and commission respect and understand that C&D of “infected premises” is one of the major limiting factors to commencing re-establishment of “orderly marketing” following a NAI discovery.
- While this represents a potential option, it will take time to implement. The process would require
 - The BC Poultry Association’s Biosecurity Committee to develop the standard.

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- The standard would have to be presented to producers and stakeholders for review and comment.
- There is no guarantee that producers who are non-supportive of the mandatory insurance would support mandatory or more rigorous and enforced C&D standards under the biosecurity program.
- It would likely require a similar supervisory review by FIRB as is currently being undertaken with mandatory insurance.
- Time is of the essence, nearly five years have passed since the last LP NAI discovery. Producers and the industry remain vulnerable and at risk without an effective, mandatory insurance scheme in place to achieve the outcome and purposes outlined in previous sections:
 - The intended outcome of the mandatory insurance:
 - The BC poultry industry returning to a system of orderly marketing in the shortest time possible to serve and retain domestic and export markets for BC poultry and poultry products after a NAI discovery.
 - The purpose of mandatory insurance:
 - Facilitate industry recovery in as short of time possible from an NAI discovery;
 - Add the necessary discipline and rigor within the regulated poultry sector to manage production consistent with the provisions of the mandatory biosecurity protocols and animal health protocols that will minimize the risk of a catastrophic highly pathogenic disease outbreak;
 - Encourage early diagnosis through active surveillance systems and voluntary submissions for testing.
 - Provide predictable and timely compensation in the event of a loss.

(b) A requirement that producers obtain private insurance for cleaning and disinfecting and/or business losses, without requiring them use a specific provider.

- As indicated in the response to Question 9, there is only limited availability within the private sector to cover cleaning and disinfecting and business interruption for broilers and layers.
- The boards and commission would propose wording of the mandatory insurance requirement in a manner as provided by the Ontario Broiler Hatching Egg and Chick Commission and not specify the requirement to purchase insurance from the captive, even though BC producers would have limited options to purchase this form of insurance from another private sector provider.
- As an alternative to insurance, the boards and commission could require producers to post a security bond that would be of sufficient value to carry out the C&D. This approach would also represent a cost to the producer.

(c) The use of contingency funds to assist individual producers where the board is satisfied during an outbreak that “gap” funds are necessary to restore the production and marketing cycle.

- Some of the boards and commission have used contingency funds in past events based on an assumed authority at the time in 2004.
- The boards and commission have not use contingency funds to date to cover “gap” losses.
- Coverage of “gap” losses lessen the disruption to the production and marketing cycle by covering the “lost” revenue to the end of the production cycle and not requiring the boards and commission to alter marketing and production cycles to return the “infected premise” back into production prior to their scheduled restocking date. The availability of business interruption coverage provides a varying level of relief to producers depending on the sector to allow the boards and commission to maintain production and marketing schedules.
- The use of contingency funds by the boards and commission to compensate for costs and losses due to NAI would in effect serve the same purpose as an insurance policy provided through the captive.
- If the use of contingency funds is viewed as being authorized under the purpose and intent of the *Act* and the provisions of the scheme, then by extension, transferring the risk to an insurance company would also be authorized.
- The boards and commission have sought further legal analysis of this approach and it being within the legal authorities of boards and commission. (See Cavanagh LLP in Appendix 9 Legal Opinions for more details.)

Question 15

What is the boards’ assessment of the view that, if levies are imposed to capitalize and fund a captive insurance company, the burden of those levies should fall most heavily on the lower mainland producers on the basis that that is the area of greatest risk?

- The burden of the levies falling most heavily on the lower mainland producers is by virtue of the vast majority of producers being in the lower mainland, it bears no direct relationship to risk.
- Risk of exposure to NAI has been determined to be the same irrespective of location of production facilities. This point is best illustrated by the random NAI discoveries in Saskatchewan (2007) and Manitoba (2010).
- The risk of transfer is highest in the lower mainland given the close proximity of poultry operations, however, the implementation of mandatory biosecurity measures have served to reduce the risk potential to all producers.

Consultation

Question 16

Describe the details of industry stakeholder consultation and any producer plebiscites the boards have conducted in relation to this proposal to date.

- As described under the Industry Engagement section of the Background, the associations have, through the RMSC and proposed captive directors:
 - Made presentations on the mandatory insurance at producer association meetings commencing in March 2011.
 - Issued regular Industry Newsletter updates.
 - Completed the first plebiscite in January 2013 to assess the level of producer support for Associations proceeding with the completion of the pre-implementation phase.
 - Completed a second plebiscite in July 2013 to assess the level of producer support in two areas
 - The association implementing a mandatory avian influenza insurance program through an industry owned captive insurance company
 - Agreement with the marketing board/commission using funds to enable the association to set-up the captive
- The results of the plebiscite have been made available to the boards and commission and will be used in the decision making process.
- The boards and commission posted the Joint Submission on their web sites for producer and other stakeholder review and comment in early December 2013.
- The boards and commission have engaged Agri-Saki Consulting Inc. to provide follow-up engagement with allied trades in January 2014.

Question 17

Describe the feedback and competing views the boards have received, including any regional differences in feedback and the nature of those differences. If plebiscites were conducted, provide the date of each plebiscite, the specific questions asked, the response rate, and the breakdown of responses according to region.

February 2013 Plebiscite Question:

- The specific wording of the plebiscite is contained in Appendix 6. In short, producers were asked:
 - I support the association proceeding with the completion of the pre-implementation phase; Yes or No.
- The plebiscite ran from February 9 to February 25 through a combination of electronic and mail-in ballots.
 - A total of 545 electronic ballots and 42 mail-in ballots were sent.
 - 45.8% of electronic ballots and 33.3% of mail-in ballots were cast.

February 2013 Plebiscite Results

- Industry-wide response rate was 44.9% with 67.8% vote in support of proceeding with implementation of the mandatory insurance administered through an industry-owned captive insurance company.
- The response rate by sector ranged from 39.8% to 73.6%.
- The result for each sector indicated majority support with the support rate ranging from 58.2% to 89.7%.
- Regional difference also factored into the equation in both chickens and eggs.
 - For chicken growers, of the 56 members on Vancouver Island and in the Interior regions, 24 or 42.9% voted with only 33.3% voting in support.
 - For egg producers, of the 29 regional members, 16 or 55.2% registered votes with only 45.5% voting in support.
 - For turkey producers, of the 16 regional members, 6 of 16 or 37.5% registered votes with 50% voting in support.
- The reasons expressed by members for non-support of proceeding included an equal distribution between:
 - Insufficient information has been made available
 - Concern over added cost of insurance
 - Perceived benefits not warranting the cost of the insurance
 - Other, including
 - Have good biosecurity in place, what are the risks?
 - Concern about coverage for specialty production
 - General opposition to insurance with various reasons cited
 - Support for mandatory C&D but not gap coverage
 - Concern about added costs to industry for “another” industry organization
 - Availability of other government programs or government support will be provided in the event of loss.
 - Regional risk is less than the Fraser Valley and consequently very limited benefits to regional producers.
- A detailed report on the results of the February plebiscite is included in Appendix 7.

July Plebiscite Question

- The details of the July plebiscite were contained in the June Newsletter update (included in Appendix 8), which included a description of
 - What implementing mandatory insurance through and industry owned captive means
 - The premiums costs
 - What “supporting the marketing board/commission to use funds for the implementation” means
 - The plebiscite process
- The plebiscite presented the following two questions:

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Do you agree with the association implementing a mandatory avian influenza insurance program through an industry owned captive insurance company?
- Do you agree with the marketing board/commission to use funds to enable the association to set-up the captive?
- The plebiscite was sent to producers on June 24 through an electronic and mail-in ballot. The voting period will run through to July 29 with weekly reminders sent to non-respondents in an attempt to increase the overall response rate.
 - A total of 585 ballots were sent.

July Plebiscite Results

- Do you agree with the association implementing a mandatory avian influenza insurance program through an industry owned captive insurance company?
 - Industry-wide response rate was 68.0% with 65.8% in support of the associations proceeding with the implementation of mandatory insurance through an industry-owned captive insurance company.
 - By sector the response rate ranged from 61.7% to 78.8%
 - The support rate ranged from 54.1% to 90.2%.
 - Regional support was negative in chicken and eggs, but positive in turkeys with response rates ranging from 47% to 69.5%.
- Do you agree with the marketing board/commission to use funds to enable the association to set-up the captive?
 - Industry-wide response rate was 67.7% with 68.2% in support of the associations proceeding with the implementation of mandatory insurance through an industry-owned captive insurance company.
 - By sector the response rate ranged from 60.9% to 78.8%
 - The support rate ranged from 55.2% to 92.7%.
 - Regional support results showed increases in the number of votes of support, with the regional egg and turkey association members voting in support.
- A detailed report on the results of the July plebiscite is included in Appendix 8.

Feedback on Joint Submission

- Only two producers comments were received on the Joint Submission by January 6, 2014; both being in opposition to mandatory insurance.

Legal Issues

Question 18

Do the NPMA and the Schemes authorize the poultry boards to: (a) require producers to obtain insurance, (b) pay producers from contingency funds for AI related losses or (c) impose levies to fund the proposed captive insurance company?

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- As stated in the Legal Authority section and in response to Question 11, the current legal analysis is mixed and the boards and commission sought a further legal analysis of these along with other questions relating to authorities.
- The boards and commission approached different lawyers to engage in the review and ultimately selected David Wilson, Cavanagh LLP who has experience with the supply management at both the provincial and national levels for a number of the poultry sectors.
- The analysis concludes:

The “authority vested in the Boards pursuant to the *Natural Products Marketing (BC) Act* can be used to require BC producers to carry AI insurance as a condition of production within the province and to fund that insurance through levies. An argument could be made that the imposition of an AI insurance requirement and any related levy funding would be beyond the statutory authority of the Boards. However, on balance, taking into account the breadth of the legislative scheme, established statutory interpretation principles and the jurisprudence, the better view is that such quota and levy requirements are within the authority of the Boards.”
- The full analysis is included in Appendix 9.
- The boards and commission did use contingency funds in the 2004 HPAI and some have in place contingencies for disease costs and losses or a dedicated fund for disease costs and losses.

Question 19

Please ensure your analysis includes a discussion of whether or how the exercise of such regulatory authority would promote the purposes of s. 2(1) of the *NPMA*. With regard to questions 18(b) and (c) in particular, please address separately the following components: (a) funds for cleaning and disinfecting costs, and (b) funds for business interruption.

In addition to the legal analysis provided in Appendix 9:

Purpose and intent of the Act

- The purpose and intent of the *Act* is “to provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in British Columbia”.
- All four poultry boards and commission have within their schemes the authority to “control production”.
- As demonstrated by the 2004 NAI, orderly marketing was severely disrupted.
- It took over two years for some producers to be set birds and recommence production and to re-establish the system of orderly marketing in all regulated poultry sectors.
- It took over 5 years for all regulated poultry sectors to return to pre-2004 production levels.

- Mandatory disease insurance is in keeping with the “control” of “production” purpose of the *NPMA* by facilitating recovery of the industry in the shortest time possible and the return to a system of orderly marketing.
- Producers within the “infected zone” are beholden to actions or inactions of the “infected premise” in the event of an NAI, in particular with respect to the ability to restock operations until such time that the “infected premise” has met the CFIA’s cleaning and disinfection (C&D) requirements leading to the removal of the infected premise declaration.
 - Any inactivity on the part of the “infected premise” disrupts the orderly marketing of the particular scheme.
 - Given the close proximity of operations, the impact is not limited to one production type. In some instances all four sectors ability to maintain orderly marketing of production can be negatively impacted by the actions or inactions of the “infected premise”.
 - CFIA does not compensate for C&D. Mandatory disease insurance will ensure that C&D can take place as soon as the virus has been inactivated by covering 90% of the cost of C&D.
 - Delays in C&D also can cause those within the “infected” zone to miss the next scheduled placement. The insurance would provide up to eight weeks of coverage for “fixed” costs in the event that the individual farm is unable to place birds on schedule.

The *NPMA* goes further in setting out powers that may be vested in a marketing board or commission.

Section 11(1)(o)(i) of the Act

- Provides the authority “to set and collect levies or charges... and use those levies and charges... received by the marketing board or commission...to carry out the purposes of the scheme”.
- Each of the poultry boards and commission has a form of this authority in their respective schemes.
- If mandatory disease insurance is considered an integral part of “control” of “production”, then, Section 11(1)(o)(i) provides the enabling authority to collect and use levies to effect the mandatory disease insurance.

Section 11(1)(o)(ii) of the Act

- Provides the authority “to the expenses of the marketing board or commission”.
- Each of the poultry boards and commission has a form of this authority in their respective schemes.
- If mandatory disease insurance is considered an integral part of “control” of “production”, then, Section 11(1)(o)(ii) provides further enabling authority to use levies collected to effect the mandatory disease insurance.

Section 11(1)(o)(iv) of the Act

June 19, 2013

BC Farm Industry Review Board - Supervisory Review Response

- Provides the authority “to equalize or adjust returns received by producers of regulated products during the periods the marketing board or commission may determine”.
- Each of the poultry boards and commission has a form of this authority in their respective schemes.
- If mandatory disease insurance is considered an integral part of “control” of “production”, then, Section 11(1)(o)(iv) provides further enabling authority to use levies collected to effect the equalization or adjustment of returns through the use of mandatory disease insurance.