

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

RECLASSIFYING FIVE ORGANISMS AS 'NOT NEW' UNDER THE HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT 1996

Proposal

1. This paper seeks authorisation for the submission of the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2019 (the Regulations) to the Executive Council.

Policy

2. The Regulations give effect to policy approved by the Cabinet Economic Development Committee [DEV-19-MIN-0028 and CAB-19-MIN-0046 refer].
3. An organism is a 'new organism' under the Hazardous Substances and New Organisms Act 1996 (HSNO Act) if, amongst other criteria, it belongs to a species not present in New Zealand before 29 July 1998. An organism that has arrived naturally or been inadvertently introduced in New Zealand since that date, and has become established in the country, is classed as a new organism.
4. The regulations will reclassify five organisms as 'not new', as they have all formed self-sustaining populations in New Zealand, which no person is attempting to manage, control or eradicate under any Act.
5. Reclassifying an organism as 'not new' under the HSNO Act means that those wishing to work with these organisms will no longer have to apply to the Environmental Protection Authority (EPA) for approval before importing, developing, and field testing or releasing the organism.
6. The Regulations reclassify the following five organisms as 'not new' under the HSNO Act by amending the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009:
 - 6.1. The beetle *Cybocephalus* sp. – Landcare Research Collections
Accession numbers NZAC04212648 and NZAC04212649
 - 6.2. The ladybird *Harmonia axyridis*

- 6.3. The parasitoid wasp *Aridelus rufotestaceus*
 - 6.4. The bacterium *Komagataeibacter xylinus*
 - 6.5. The bacteriophage (virus) *Listeria virus P100*.
7. The paper approved by the Cabinet Economic Development Committee referred to the organism *Cybocephalus* sp. as having a particular Ministry of Primary Industries (MPI) 'voucher code' number, based on an MPI database of specimens. However, in preparing the Regulations it became apparent that the MPI database is not publicly searchable. MPI recommended that the Regulations instead refer to a Landcare Research accession number, as that database is publicly searchable. A qualified entomologist at Landcare Research has confirmed that the *Cybocephalus* sp. organism referred to by the Landcare Research accession numbers is the same organism referred to by the MPI voucher code.
 8. This paper therefore recommends that the approval made by Cabinet Economic Development Committee in point 2.1 of DEV-19-MIN-0028 of 20 February 2019 with reference to the MPI voucher be rescinded, and that Cabinet approve the organism referenced by its Landcare Research accession numbers.
 9. The accession numbers (NZAC04212648 and NZAC04212649) are for the specimens of *Cybocephalus* sp. which are held in the New Zealand Arthropod Collection. These can be publicly accessed via a web portal, and by searching either the number, or the taxonomic name¹.

Timing and 28-day rule

10. If agreed to by Cabinet, the changes would be notified in the New Zealand Gazette and would come into force 28 days afterwards (on 15 September 2019 following Executive Council on 12 August 2019).

Compliance

11. The Regulations comply with each of the following:
 - 11.1. the principles of the Treaty of Waitangi;
 - 11.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 11.3. the principles and guidelines set out in the Privacy Act 1993;
 - 11.4. relevant international standards and obligations;
 - 11.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

¹ <https://scd.landcareresearch.co.nz/Search>

12. There are the following statutory prerequisites in the HSNO Act that exist for the making of the Regulations:
 - 12.1. the Minister for the Environment (the Minister) must have considered whether the organisms in question have formed a self-sustaining population in New Zealand and whether any person is attempting to manage, control or eradicate the organisms under any Act (section 140(2) of the HSNO Act);
 - 12.2. the Minister must have requested the Environmental Protection Authority (EPA) to consult with affected persons and provide the Minister with advice on submissions received, and on the best international practices for the safe management of new organisms. The Minister must have regard to the EPA's advice (section 141(1) of the HSNO Act); and
 - 12.3. the Regulations must also be consistent with sections 4 to 8 inclusive of the HSNO Act (the purpose section, the principles and matters to be taken into account).
13. I confirm that all of these statutory requirements have been met.

Certification by Parliamentary Counsel

14. The draft regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

15. The Regulatory Quality Team at the Treasury determined that the regulatory decisions sought were exempt from the requirement to provide a Regulatory Impact Assessment, as they have no, or minor, impacts on businesses, individuals or not-for-profit entities.

Publicity

16. The fact that the five organisms have been reclassified as 'not new' under the HSNO Act will be published on the EPA's website once the Regulations come into effect. The EPA may also publicise the reclassification by way of media release, once the Regulations come into effect.

Proactive release

17. This paper will be proactively released within 30 business days. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Consultation

18. The following consultation that has taken place in the course of developing the policy and draft regulations:

18.1. The EPA undertook a public consultation and reported the results to me;

18.2. The Ministry for the Environment consulted with the EPA, MPI, the Department of Conservation, Te Puni Kōkiri, the Treasury, the Ministry of Business, Innovation and Employment. The Department of the Prime Minister and Cabinet was informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 20th February 2019 the Cabinet Economic Development Committee agreed, and on 25th February 2019 Cabinet confirmed, that the following five organisms be reclassified as “not new” under the HSNO Act, by amending the Hazardous Substances and New Organisms (Organisms Prescribed as Not New) Regulations 2009 (the Regulations) [DEV-19-MIN-0028 and Cabinet Minute CAB-19-MIN-0046 refer]:

1.1. The beetle *Cybocephalus* sp.– MPI voucher code T12_03094

1.2. The ladybird *Harmonia axyridis*

1.3. The parasitoid wasp *Aridelus rufotestaceus*

1.4. The bacterium *Komagataeibacter xylinus*

1.5. The bacteriophage (virus) *Listeria virus P100*

2. **note** the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2019 will give effect to the decision referred to in paragraph 1 above;

3. **agree** the MPI voucher code used to identify the organism *Cybocephalus* sp. above be replaced in the Regulations by Landcare Research Collections Data accession numbers NZAC04212648 and NZAC04212649;

4. **authorise** the submission to the Executive Council of the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2019;

5. **note** that the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2019 will come into force 28 days after publication in the New Zealand Gazette.

6. **note** that I confirm that the following statutory prerequisites for the Regulations have been met:

6.1. the Minister for the Environment must have considered whether the organisms in question have formed a self-sustaining population in New

Zealand and whether any person is attempting to manage, control or eradicate the organisms under any Act (section 140(2) of the HSNO Act);

6.2. the Minister must have requested the EPA to consult with affected persons and provide the Minister with advice on submissions received, and on the best international practices for the safe management of new organisms. The Minister must have regard to the EPA's advice (section 141(1) of the HSNO Act); and

6.3. the Regulations must also be consistent with sections 4 to 8 inclusive of the HSNO Act (the purpose section, the principles and matters to be taken into account).

Authorised for lodgement

Hon David Parker

Minister for the Environment