



Reclassifying two organisms as "not new" under the Hazardous Substances and New Organisms Act 1996

Date Submitted:	30/05/2022	Tracking #: BRF-1315	
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Not Urgent

	Action sought:	Response by:
Hon David Parker, Minister for the Environment	Note that this paper accompanies a Cabinet paper that seeks agreement to reclassify two organisms as "not new".	
Hon Phil Twyford, Associate Minister for the Environment	Note that this paper accompanies a Cabinet paper that seeks agreement to reclassify two organisms as "not new".	

Actions for Minister's Office Staff	Return the signed report to MfE. Forward to Ministerial colleagues with whom the Minister wishes to consult as part of the Cabinet process.
Number of appendices and attachments 2	Appendix 1: Considerations under sections 4 to 8 of the HSNO Act Appendix 2: Assessment report and recommendation for new organisms proposed for prescription as not new organisms – Environmental Protection Authority

Key contacts

Position	Name	Cell phone	1st contact
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Reclassifying two organisms as "not new" under the Hazardous Substances and New Organisms Act 1996

1. This briefing accompanies a draft Cabinet Environment, Energy and Climate Committee paper that analyses the evidence and risk of reclassifying two organisms as "not new" under the Hazardous Substances and New Organisms Act 1996 (HSNO Act).
2. The purpose of this briefing is to advise you:
 - a. of the statutory requirements to be fulfilled before you can recommend making regulations to reclassify organisms as "not new"
 - b. to recommend that you submit to Cabinet the attached Cabinet paper recommending two organisms be reclassified as "not new".

Background

3. When an organism has arrived naturally or been inadvertently introduced in New Zealand since 29 July 1998, and has become established in the country, it is classed as a new organism. However, in this situation, the HSNO Act risk management provisions for new organisms are not the most appropriate means of regulation. The HSNO Act contains a regulation-making provision to make organisms "not new" by Order in Council.
4. Reclassifying an organism as "not new" means that those wishing to work with this organism would no longer have to apply to the Environmental Protection Authority (EPA) for approval before importing, developing, field testing or releasing the organism.
5. Under the HSNO Act, you must fulfil certain prerequisites before you can recommend the making of regulations to reclassify organisms as "not new".
 - a. You must consider:¹
 - i. whether the organisms in question has formed a self-sustaining population in New Zealand
 - ii. whether any person is attempting to manage, control or eradicate the organisms under any Act.
 - b. You must also request the EPA to:²
 - i. advise all persons that could be affected by the regulations about the proposal to reclassify organisms as "not new", and give these persons reasonable opportunity to make submissions
 - ii. advise you about any submissions received and the EPA's view on the submissions and the proposed regulations
 - iii. advise you on the best international practices for the safe management of new organisms.

¹ Section 140(2) of the HSNO Act.

² Section 141(1)-(2) of the HSNO Act.

- c. You must consider the submissions and comments received from the EPA and the EPA's advice on best international practices.³
 - d. You must also 'recognise and provide for' the principles in section 5 of the HSNO Act and take into account the matters in sections 6 to 8.
6. The reclassification of an organism as "not new" must also be consistent with the purpose of the HSNO Act.⁴

Information pertinent to these considerations

7. The EPA has advised you that both the beetle *Paropsisterna cloelia* and the bacterium *Paenibacillus alvei* have formed self-sustaining populations in New Zealand and that no-one is attempting to manage, control or eradicate them under any Act (also see page 18 of Appendix 2).
8. On 20 October 2021 you requested that the EPA initiate consultation on a proposal to prescribe seven new organisms as "not new". The EPA undertook public consultation on reclassifying these seven organisms between 8 November and 17 December 2021.
9. The EPA received six submissions during this consultation, evaluated the proposals in light of these submissions, and reported back to you in February 2022 (Appendix 2).
10. The EPA advised you that there is nothing in international best practice suggesting that these organisms should not be reclassified as "not new". As the EPA considers that New Zealand's legislation is not comparable to any other country's legislation, ie. the concept of a "new organism" is unique to New Zealand, there are no international best practices that can be followed (also see page 18 of Appendix 2).
11. Table 2 of the EPA's Assessment Report (see page 20 of Appendix 2) contains a summary of submissions received during the EPA's consultation. Five submissions received during the consultation supported the denewing of *Paropsisterna cloelia* and no submissions received were opposed. Two submissions received during the consultation supported the denewing of *Paenibacillus alvei* and no submissions received were opposed.
12. The purpose of the HSNO Act is to "protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms." Reclassifying the proposed two organisms as "not new" is consistent with the Act's purpose. Removing the new organism controls for the two organisms does not compromise environmental protection or health and safety as these two organisms are already widespread in New Zealand.

Agency views and recommendation

13. In its submission, DOC expressed its support for the reclassification of the beetle *Paropsisterna cloelia*, given its rapid spread. In addition, DOC supported the proposal to reclassify the bacterium *Paenibacillus alvei*.

³ Section 141(1) of the HSNO Act.

⁴ Section 4 of the HSNO Act.

- 14. No agency opposed the proposed reclassification of these two organisms as “not new” under the HSNO Act.
- 15. Ministry for the Environment (MfE), taking into account the evidence provided by the EPA and the views of other agencies, considers that the benefits of reclassifying the two organisms as “not new” outweigh any risks.
- 16. MfE recommends that you propose to Cabinet that two particular organisms should be reclassified as “not new” under the HSNO Act:
 - the beetle *Paropsisterna cloelia*
 - the bacterium *Paenibacillus alvei*.

Next steps

- 17. If you agree with this analysis, the next step is to recommend to Cabinet that the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009 be amended to reclassify these organisms as “not new”.
- 18. We have provided a draft Cabinet paper for your consideration, consultation with other parties, and submission to Cabinet.

Recommendations

We recommend that you:

- a. **Agree** to recommend to Cabinet that the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009 be amended to add the following two organisms:
 - the beetle *Paropsisterna cloelia* Yes/No
 - the bacterium *Paenibacillus alvei*. Yes/No
- b. **Agree** that, for the reasons outlined in paragraph 12, the above reclassification proposal is consistent with the purpose of the HSNO Act. Yes/No
- c. **Confirm** that you have considered the following statutory requirements in relation to each of the organisms proposed for reclassification:
 - i. whether the organisms have formed self-sustaining populations in New Zealand (see paragraph 7) Yes/No
 - ii. whether any person is attempting to manage, control or eradicate them under any Act (see paragraph 7) Yes/No
 - iii. the submissions and comments received from the Environmental Protection Authority (EPA) following consultation (see Table 2 of Appendix 2)

Yes/No

iv. the EPA's advice on best international practices (see paragraph 10)

Yes/No

v. the matters listed in sections 6 to 8 of the HSNO Act (see Appendix 1).

Yes/No

d. **Agree** that, for the reasons outlined in Appendix 1, the above reclassification proposal recognises and provides for the following matters, as required by section 5 of the HSNO Act:

i. the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems

Yes/No

ii. the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations.

Yes/No

e. **Agree** to submit the attached Cabinet to the Environment, Energy and Climate Committee, subject to any changes resulting from your review and Ministerial Consultation.

Yes/No

Signature

Glenn Wigley Director - Policy and Regulatory Waste and Resource Efficiency Date	
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Hon David Parker Minister for the Environment Date	
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Appendix 1: Considerations under sections 4 to 8 of the HSNO Act

<p>Section 4: Purpose of the Act: “The purpose of this Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.”</p>	<p>Reclassifying these two organisms as “not new” is consistent with the Act’s purpose. Removing the new organism controls for the two organisms does not compromise environmental protection or health and safety as these two organisms are already widespread in New Zealand.</p>
<p>Section 5: Principles relevant to purpose of Act: “All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, recognise and provide for the following principles:</p> <ol style="list-style-type: none"> a) the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems; b) the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations.” 	<p>The applicant for the beetle <i>Parapsisterna cloelia</i>, Scion, has stated that prescribing this organism as “not new” organisms would enable the industry to undertake greater research into their impact on the New Zealand environment. The research would play a vital role in understanding any negative impacts and beneficial aspects to provide insight into viable management options.</p> <p>In the case of <i>Paenibacillus alvei</i>, prescribing this bacterium as “not new” would have economic benefits with the development of an Import Health Standard for bee products.</p> <p>The EPA considers that facilitating research to study organisms, improving the wellbeing of people or commercial exchange is consistent with the principles found in section 5 of the HSNO Act.</p>
<p>Section 6: Matters relevant to purpose of Act: “All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, take into account the following matters:</p> <ol style="list-style-type: none"> a) the sustainability of all native and valued introduced flora and fauna: b) the intrinsic value of ecosystems: c) public health: d) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga: 	<p>The matters relevant to the purpose of the HSNO Act, described in section 6, have been taken into account by recognising that the change of status by an Order in Council will:</p> <ul style="list-style-type: none"> • facilitate research to understand the impacts of the beetle on the New Zealand environment and to provide insight into viable management options; • remove a trading barrier by lifting the sanitary measures on imports for bee products. <p>The applicants provided information that <i>Paenibacillus alvei</i> and <i>Parapsisterna cloelia</i> are established in New Zealand. Prescribing these two organisms as “not new” organisms will negate the need for approval from the EPA,</p>

<p>e) the economic and related benefits and costs of using a particular hazardous substance or new organism:</p> <p>f) New Zealand’s international obligations.”</p>	<p>removing costs and unnecessary regulatory burdens on research and innovation, and trade.</p> <p>The EPA did not identify any international obligations that would be impacted by prescribing these organisms as “not new”.</p>
<p>Section 7: Precautionary approach: “All persons exercising functions, powers, and duties under this Act including, but not limited to, functions, powers, and duties under sections 28A, 29, 32, 38, 45, and 48, shall take into account the need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects.”</p>	<p>A public consultation was held to reduce the scientific and technical uncertainty of the potential prescription of these organisms as not new. For the species that are already self-established, keeping their new organism status would not limit the risk they may represent.</p> <p>Conversely, making an organism “not new” would help understand the long-term consequences of the organism’s presence in the New Zealand environment. We note that deregulating an organism does not mean that it cannot be managed or controlled under the Biosecurity Act if it is found to have adverse effects on the environment.</p>
<p>Section 8: Treaty of Waitangi: “All persons exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”</p>	<p>The principles of partnership and participation refer to the shared obligation on both the Crown and Māori to act reasonably, honourably and in good faith towards each other to ensure the making of informed decisions on matters affecting the interests of Māori. The Crown’s duty of active protection is the obligation to take positive steps to ensure Māori interests are protected. Further, this protection is not merely passive, but rather extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable.</p> <p>The EPA reached out to and undertook consultation with iwi and Māori (as outlined above). In response to opposition to the reclassification of three ornamental plants, the EPA agreed the status of these plants should not be changed.</p>

Appendix 2: Assessment report and recommendation for new organisms proposed for prescription as not new organisms – Environmental Protection Authority

Proactively released