

In-Confidence

Office of the Minister for the Environment

ENV - Cabinet Environment, Energy and Climate Committee

Reclassifying Two Organisms as “Not New” under the Hazardous Substances and New Organisms Act 1996

Proposal

- 1 This paper seeks agreement to reclassify two organisms as “not new” by amending the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009 (the Regulations).

Relation to government priorities

- 2 This is a routine operational adjustment that requires Cabinet approval.

Executive Summary

- 3 Two organisms are proposed for reclassification as “not new” under the Hazardous Substances and New Organisms Act 1996 (HSNO Act):
 - 3.1 the beetle *Paropsisterna cloelia*
 - 3.2 the bacterium *Paenibacillus alvei*.
- 4 Under the HSNO Act, certain organisms are classified as “new organisms” if they fall within certain statutory criteria,¹ including if the organism:
 - 4.1 belongs to a species that was not present in New Zealand before 29 July 1998;
 - 4.2 is subject to certain types of approvals granted by the Environmental Protection Authority (EPA), such as containment approvals, or conditional release approvals; or
 - 4.3 is a genetically modified organism.
- 5 The HSNO Act contains a regulation-making power to declare organisms “not new” and thus remove the need to apply for EPA approvals to import, develop, field test, or release the organism.
- 6 At my direction, in November 2021 the EPA publicly consulted on proposals to reclassify seven organisms as “not new” under this power of the HSNO Act. The EPA reported back to me following this consultation and advised that there is merit in reclassifying two of these organisms as “not new”.

¹ Section 2A of the HSNO Act.

- 7 I propose to reclassify the above two organisms as “not new” under the HSNO Act, as they have both formed self-sustaining populations in New Zealand and no person is attempting to manage, control or eradicate these populations under any Act. Based on advice from the EPA and the Ministry for the Environment (MfE), I consider that the benefits to reclassifying these two organisms outweigh any risks.

Background

- 8 The HSNO Act is an environmental and health and safety law for managing hazardous substances and new organisms in New Zealand. The purpose of the 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.”²
- 9 Under the HSNO Act, an organism is a “new organism” if it falls within one of the relevant statutory criteria.³ These criteria include organisms that belong to a species that was not present in New Zealand before 29 July 1998, and organisms for which an approval has been granted by the EPA to import them into containment or for conditional release.
- 10 A person must obtain approval from the EPA before knowingly importing, developing, field testing or releasing a new organism.⁴ Such controls are meant to prevent the entry of the new organism into the country in the first place, or minimise the risks of the escape of a new organism imported into containment.
- 11 There are strong linkages between the new organisms sections of the HSNO Act and the Biosecurity Act 1993. The HSNO Act covers the assessment and management of new organisms intended for importation, development, field testing or release in New Zealand, while the Biosecurity Act provides for the exclusion, eradication, and effective management of pests and unwanted organisms.
- 12 When organisms have established self-sustaining populations in New Zealand, the Biosecurity Act is a more appropriate tool to manage the organisms if they are classed as unwanted organisms. An “unwanted organism” is defined in the Biosecurity Act as any organism a Chief Technical Officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health.

Reclassifying organisms as “not new”

- 13 The HSNO Act contains a regulation-making power to declare organisms “not new” and thus remove the need to apply for EPA approvals to use or import those organisms. The Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009 were made under this power and have been amended several times to reclassify organisms as “not new”.
- 14 Following consultation, the EPA has recommended that two organisms should be reclassified as “not new”. These consist of one beetle and one bacterium:
- 14.1 the beetle *Paropsisterna cloelia*
 - 14.2 the bacterium *Paenibacillus alvei*.

² Section 4 of the HSNO Act.

³ Section 2A of the HSNO Act.

⁴ Section 25 of the HSNO Act.

Statutory prerequisites

- 15 Before making regulations to reclassify new organisms as “not new”, I must first consider:
- 15.1 whether the organisms in question have formed a self-sustaining population in New Zealand; and
- 15.2 whether any person is attempting to manage, control or eradicate the organisms under any Act.⁵
- 16 I must also request the EPA to consult with affected persons and provide me with advice on submissions received and the proposed regulations. The EPA must also advise me on the best international practices for the safe management of new organisms, to which I must give regard.
- 17 Reclassifying new organisms as “not new” must also be consistent with the purpose of the HSNO Act. I must ‘recognise and provide for’ the principles in section 5 of the HSNO Act and ‘take into account’ the matters in sections 6 to 8 of the HSNO Act. Appendix 1 goes into further detail about these considerations.

EPA consultation

- 18 In March 2021, the EPA sought public proposals for organisms to reclassify as “not new”. It received 51 proposals from 12 applicants, which were assessed and narrowed down to seven organisms that met the requirements to be considered as potential candidates.
- 19 The EPA undertook public consultation on reclassifying these seven organisms between 8 November and 17 December 2021. During this consultation, the EPA received six submissions, evaluated the proposals in light of these, and reported back to me in February 2022.
- 20 The EPA contacted iwi and other Māori representatives to notify them of the opportunity to submit their views during the public consultation. The EPA received a submission on the proposals from Ngāi Tahu, which supported the reclassification of the beetle *Paropsisterna cloelia* as “not new”, in order to help find a biological control agent against this pest species. Ngāi Tahu neither supported nor opposed the deregulation of the bacterium *Paenibacillus alvei*.
- 21 The EPA has advised me that both of these organisms have formed self-sustaining populations in New Zealand and that no-one is attempting to manage, control or eradicate them under any Act. The EPA also advised that there is nothing in international best practice suggesting that these organisms should not be reclassified as “not new”.

⁵ Section 140(2) of the HSNO Act.

Analysis

The beetle Paropsisterna cloelia

- 22 The beetle *Paropsisterna cloelia*, commonly known as the eucalyptus variegated beetle, was proposed by Scion to be made “not new”.
- 23 This pest beetle was first detected in 2016 in Hawke’s Bay and since then has rapidly spread across the North and South Islands. Adults and larvae of *Paropsisterna cloelia* feed on new foliage of various eucalyptus species, impacting pulpwood and timber production by slowing the growth of the trees.
- 24 Five submissions received during the consultation supported the denewing of *Paropsisterna cloelia* and no submissions received were opposed.
- 25 One of the objectives of the deregulation process is to allow research on pest organisms already present in New Zealand to gain a better understanding of their impacts on the environment and the health and safety of people and communities.
- 26 Consultation submissions noted that a change of status would facilitate the study of this beetle and the development of Integrated Pest Management solutions to help control its population and reduce its impact on commercial eucalyptus species. The Department of Conservation (DOC) expressed its support for the reclassification of the beetle *Paropsisterna cloelia*, given its rapid spread.
- 27 Furthermore, should a new biological control agent be identified and approved to combat *Paropsisterna cloelia*, having the beetle prescribed as “not new” would allow the release of infested beetles which would facilitate the establishment of the biological control agent.
- 28 Based on the information provided by the applicant and submitters, as well as its own investigation, the EPA concluded that *Paropsisterna cloelia* formed a self-sustaining population in New Zealand after 1998 and is currently not subject to management, control or eradication efforts under any Act.

The bacterium Paenibacillus alvei

- 29 The bacterium *Paenibacillus alvei* was proposed by the Ministry for Primary Industries (MPI) to be made “not new”.
- 30 This ubiquitous bacterium can be found in various environments, such as cheese, fermented tomatoes, healthy beehives, honeybee guts, honey and soil. It is considered to be widespread in New Zealand.
- 31 The applicant considered that the bacterium is highly likely to have been present in New Zealand for a prolonged period of time, based on its detection in geographically disparate locations within New Zealand. Furthermore, due to its wide distribution in the country and the absence of evidence of the existence of more pathogenic strains overseas, MPI considered that there is no reason to maintain its new organism status.
- 32 Two submissions received during the consultation supported the denewing of *Paenibacillus alvei* and no submissions received were opposed. Ngāi Tahu’s submission neither supported nor opposed the denewing of *Paenibacillus alvei*.

- 33 According to MPI, the new organism status of *Paenibacillus alvei* is a barrier to the trade of bee products, as the requirements that would need to be imposed in an Import Health Standard would be seen as unjustifiable by trading partners. DOC supported the proposal to reclassify the bacterium *Paenibacillus alvei* in its submission.
- 34 Based on the information provided by the applicant and the submitters, and to the best of its knowledge, the EPA have concluded that *Paenibacillus alvei* is a globally ubiquitous species that was present in New Zealand prior to 29 July 1998, with a self-sustaining population in New Zealand.⁶ Additionally, there are no efforts to manage, control or eradicate this bacterium under any Act.

Overall conclusion on reclassifying these organisms as “not new”

- 35 The EPA advises that there is merit in reclassifying both of these organisms as “not new”. Doing so would make it easier to work with the organisms by removing the requirement to obtain HSNO Act approvals to work with these organisms, which are present in self-sustaining populations in New Zealand.
- 36 No-one is attempting to manage, control or eradicate either of these organisms under any Act. In addition, neither are on MPI’s Unwanted Organism Register under the Biosecurity Act.
- 37 Based on advice from the EPA and MfE, I consider that the benefits to reclassifying these two organisms outweigh any risks.

Financial Implications

- 38 There are no direct fiscal implications to the Crown from the proposals in this paper.
- 39 Reclassifying the organisms as “not new” under the HSNO Act would mean that people would no longer have to apply to the EPA for approval, and pay the necessary fees, to work with these organisms.

Legislative Implications

- 40 If the Committee agrees that both or one of the two organisms should be reclassified as “not new” under the HSNO Act, the Parliamentary Counsel Office will draft an appropriate Order in Council to amend the Regulations.

Impact Analysis

Regulatory Impact Statement

- 41 Treasury's Regulatory Impact Analysis team has determined that this proposal to renew two organisms under the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009 is exempt from the

⁶ In 2007, the EPA previously determined that *Paenibacillus alvei* was a new organism due to doubt regarding evidence provided to support a “not new” determination. Based on the EPA’s new understanding of microbial ubiquity, the EPA has concluded that *Paenibacillus alvei* is a globally ubiquitous species that was present in New Zealand prior to 29 July 1998. Although the EPA may revoke or reissue a determination issued by it if it receives further information, there is no new information beyond what was available to the EPA in 2007 at hand. Therefore, a reconsideration of the same evidence in a new determination is not a viable option.

requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

- 42 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

Māori implications

- 43 One iwi, Ngāi Tahu, supported the reclassification of the beetle *Paropsisterna cloelia*, to help find a biological control agent against this pest species. There are expected to be no negative implications to Māori (as individuals, iwi, hapū, and whanau) due to the proposals in this paper.

Gender implications

- 44 There are no gender implications of the proposals in this paper.

Disability implications

- 45 There are no disability implications of the proposals in this paper.

Human Rights

- 46 There are no inconsistencies between the proposal and the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

- 47 The EPA undertook a public consultation from 8 November to 17 December 2021. As noted above, this is a statutory prerequisite before organisms can be reclassified as “not new” under the HSNO Act. The EPA also contacted iwi and other Māori representatives to give them the opportunity to submit their views during the public consultation.
- 48 MfE has consulted with the Environmental Protection Authority, Ministry for Primary Industries, Department of Conservation and Te Puni Kōkiri in the preparation of this paper. The Department of Conservation supports the proposal to reclassify these two organisms as not new.

Communications

- 49 MfE and the EPA will advise relevant agencies, submitters and external parties once the decision has been made.

Proactive Release

- 50 I propose that this paper be made publicly available once the decision has been made and published on the EPA website.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that the Hazardous Substances and New Organisms Act 1996 (HSNO Act) enables “new” organisms to be reclassified as “not new” by Order in Council;
- 2 **agree** that the HSNO Act controls for the two organisms specified below are not appropriate because the organisms have established self-sustaining populations in New Zealand which no-one is attempting to control, manage or eradicate;
- 3 **note** that reclassifying these organisms as “not new” will provide benefits by enabling further research and reducing any barriers to trade;
- 4 **agree** that the following organisms be reclassified as “not new” under the HSNO Act, by amending the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009:
 - 4.1 the beetle *Paropsisterna cloelia*
 - 4.2 the bacterium *Paenibacillus alvei*.
- 5 **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposal.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Appendix 1.

Considerations under sections 4 to 8 of the HSNO Act

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.”	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.
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: - the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems; - 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.”	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. 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. 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.
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: - the sustainability of all native and valued introduced flora and fauna; - the intrinsic value of ecosystems; - public health; - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga:	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: - 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. 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, removing costs and unnecessary regulatory burdens on research and innovation, and trade.

e) the economic and related benefits and costs of using a particular hazardous substance or new organism: f) New Zealand's international obligations."	The EPA did not identify any international obligations that would be impacted by prescribing these two organisms as "not new".
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."	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. 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.
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)."	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. 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.

Appendix 2.

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

Proactively released