

Biosecurity (Notifiable Organisms) Order 2010

Regulatory Impact Statement

ISBN 978-0-478-37508-4 (online)

November 2010



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This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Agriculture and Forestry Biosecurity New Zealand (MAF). It provides an analysis of options to encourage notification of three organisms to assist with current MAF control or surveillance programmes and remove obligations to notify three organisms, which MAF considers to be no longer necessary.

MAF's preferred option is to include these proposed changes in the Biosecurity (Notifiable Organisms) Order 2010. MAF considers that the changes are unlikely to:

- impose additional costs on businesses;
- impair private property rights, market competition, or the incentives on businesses to innovate and invest; or
- override fundamental common law principles.

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Status Quo and Problem Definition

BACKGROUND

The Ministry of Agriculture and Forestry Biosecurity New Zealand (MAF) is the lead biosecurity agency and administers the Biosecurity Act 1993. MAF needs to be notified about the emergence or spread of harmful organisms in New Zealand to:

- preserve New Zealand's disease freedom status;
- support overseas market access negotiations;
- investigate and respond to incursions of invasive harmful organisms; and
- manage established pests in and between regions.

Section 46 of the Biosecurity Act imposes a duty on all persons in New Zealand to report notifiable organisms to a chief technical officer. Section 45 (2) of the Biosecurity Act enables the Governor-General, by Order in Council, to declare that certain organisms are notifiable organisms. The Biosecurity (Notifiable Organisms) Order 2006 lists all the organisms that have been declared notifiable.

In general, notifiable organisms are organisms that have, or would have, a significant adverse effect on New Zealand's environment, economy or the health of humans if they became established here.

All organisms on the Biosecurity (Notifiable Organisms) Order have been previously assessed against the criteria in the "Ministry of Agriculture and Forestry Policy Statement on Unwanted Organisms for the Purposes of the Biosecurity Act 1993" and declared to be Unwanted Organisms by a chief technical officer.

Section 154 (n) of the Biosecurity Act makes it an offence to fail or refuse to comply with the duty imposed by section 46. Any person convicted of an offence against section 46 is liable, if convicted on indictment –

- a) in the case of an individual person: to imprisonment for a maximum period of five years, or a fine not exceeding \$100 000, or both; or
- b) in the case of a corporation: to a fine not exceeding \$200 000.

Organisms suitable for notifiable status

MAF has identified three unwanted organisms that could be declared notifiable organisms to assist biosecurity programmes to manage them.

Phragmites australis (Phragmites) and *Zizania latifolia* (Manchurian wild rice) are unwanted organisms under active control and surveillance by MAF and regional councils as part of national interest pest responses. These responses aim to eradicate them from New Zealand. Phragmites is currently eradicated from all known sites and Manchurian wild rice is being contained in Northland and eradicated from other sites. MAF and regional councils currently produce and distribute information materials to stakeholders likely to come in contact with organisms to encourage notification of undetected populations. Early reporting is essential so that MAF can make and implement control decisions quickly, before a population can establish and spread.

Solenopsis geminata (tropical fire ant) is an unwanted organism which is not present in New Zealand. MAF carries out active surveillance for Tropical fire ant at ports of entry as

part of MAF's invasive ant programme. MAF currently produces and distributes information materials to stakeholders likely to come in contact with the ants to encourage voluntary notification of incursions. Early reporting is essential so that MAF can make and implement control decisions quickly, before a population can establish and spread. MAF has previously responded to an incursion of *Solenopsis invicta* (red imported fire ant), which is similar in impact to Tropical fire ant.

A chief technical officer has assessed these organisms against the 'Ministry of Agriculture and Forestry Policy Statement on Unwanted Organisms for the Purposes of the Biosecurity Act 1993' and approved them to be made notifiable.

Notification no longer considered necessary

Gonioctena olivacea (Broom leaf beetle), *Chilocorus kuwanae* (no common name) and *Onthophagus binodis* (no common name) are beetles that can be used for the biological control of pests. These beetles were made notifiable organisms under the Biosecurity Act because MAF declined an application to import these organisms in the 1990s under the Animals Act 1967. MAF's decision was based on a lack of information and uncertainty about the organisms' impacts rather than a view that they would pose a specific threat.

The Environmental Risk Management Authority (ERMA) now decides on the entry of new organisms under the Hazardous Substances and New Organisms Act 1996. ERMA has approved Broom leaf beetle for conditional release in Canterbury, and signalled that Landcare Research is likely to apply in 2010 for ERMA to consider approving the release of 20 species of dung beetle, including *Onthophagus binodis*.

MAF's role is to exclude, eradicate and effectively manage pests and unwanted organisms. MAF would not respond to an incursion of an organism that had a net benefit for New Zealand, and would consider it a low priority to respond to an incursion of an organism with only minor impacts. MAF would be unlikely to respond to an incursion of *Chilocorus kuwanae* or *Onthophagus binodis*. MAF considers that MAF's website and "Exotic Pest and Disease Hotline" are adequate passive surveillance tools to encourage reporting of incursions of *Chilocorus kuwanae* or *Onthophagus binodis*. MAF, therefore, considers that the obligation to notify these beetles is unnecessary.

Objectives

1. To encourage reporting of specific harmful organisms to MAF to enable early detection, investigation and response to incursions in New Zealand or outside of their current known areas.
2. To ensure that obligations to report organisms are only placed on organisms that MAF is likely to investigate or respond to.

Regulatory Impact Analysis

OPTION ONE: PRODUCE AND DISSEMINATE INFORMATION TO STAKEHOLDERS

Increased funding would enable MAF and regional councils to develop better surveillance programmes for the organisms. These programmes could use the media and local events to communicate information about the importance of notifying authorities about incursions of harmful organisms into New Zealand or outside of their current known areas. These programmes would complement the information brochures that MAF and regional councils currently have available to the public. Funding would need to be re-prioritised from within baselines.

Net benefit

Option one would help to achieve objective one by making it easier for the public to become aware of the presence of harmful organisms, the nature and aims of the management activity, and why it is important to notify authorities. However, option one could not achieve objective two as the beetles would remain notifiable organisms, even though the reporting obligation is unnecessary. In addition, option one is more costly than the status quo and option two, and could divert funding away from higher priority biosecurity activities.

OPTION TWO: AMEND THE ORDER TO ADD THREE ORGANISMS AND REMOVE THREE ORGANISMS, AND UPDATE PUBLICATIONS TO REFLECT THE CHANGE

Option two would amend the Biosecurity (Notifiable Organisms) Order to declare Phragmites, Manchurian wild rice, and Tropical fire ant to be notifiable and would revoke the notifiable status of the beetles. MAF and regional councils would support the change by providing information on the changes of status to stakeholders likely to come in contact with the organisms to encourage compliance and reduce the potential for unintended non-compliance.

Net benefit

Option two would help achieve objective one by creating an incentive for people to notify authorities of incursions of the three organisms in New Zealand or outside of their current known areas. Early reporting of incursions enables MAF to implement control measures quickly, which is substantially cheaper than responding to populations that have established and spread. Option two would also help achieve objective two as the notifiable status of the beetles would be revoked.

Option two would impose a minor additional regulatory impact through the obligation to report the three organisms, although this is offset by the removal of three organisms. Option two would be more costly than the status quo and less costly than option one as it would only require updating the existing information materials, rather than generating new material. MAF considers that the cost would be minimal and could be accommodated from within existing surveillance programme budgets.

Consultation

No public consultation has been undertaken during this review. Consultation is not a statutory pre-requisite for the making of Orders under section 45 of the Biosecurity Act. MAF considers the changes to be minor and does not anticipate stakeholder opposition.

Phragmites and Manchurian wild rice are unwanted organisms, and listed as pests in the regional pest management strategies where they are known to occur. Regional councils have consulted on Phragmites and Manchurian wild rice as part of their inclusion in regional pest management strategies.

MAF consulted the Department of Conservation, the Department of Prime Minister and Cabinet, the Environmental Risk Management Authority, the Ministry for the Environment, the Ministry of Fisheries, the Ministry of Health, the Ministry of Justice, the New Zealand Food Safety Authority and the Treasury on the proposals in this paper.

Conclusions and Recommendations

Option two is MAF's preferred option. Option two is more likely to achieve both objectives than option one or the status quo. Option two is cheaper than option one and marginally more expensive than the status quo. Option two would coincide with an agreed amendment to the Biosecurity (Notifiable Organisms) Order 2006, so is feasible to implement. Option two also aligns with the Government's statement on regulation: "*Better regulation, less regulation*" as it will remove unnecessary notification obligations for three organisms.

Implementation

Option two would be implemented through the Biosecurity (Notifiable Organisms) Order 2010. The Biosecurity (Notifiable Organisms) Order 2010 will be notified in the *Gazette* once it is made. MAF will publish the Order on the internet and in selected publications to make stakeholders aware of the changes.

Monitoring, Evaluation and Review

MAF intends to review the Biosecurity (Notifiable Organisms) Order 2010 following the development and approval of the new policy to prioritise risk organisms, and an amendment to the Biosecurity Act. The new policy will have criteria describing when organisms are suitable to be declared unwanted and/or notifiable. MAF intends to consult the public as part of this future review