



Environmental
Protection Authority
Te Mana Rauhi Taiao

Report on Submissions

Submissions received during public consultation on the proposed standard for zoo containment facilities

April 2018

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Introduction

This submission report presents an analysis of the submissions received during the consultation on the proposed standard for zoo containment facilities (proposed standard).

The proposed standard sets out rules to restrict zoo animals to zoo containment facilities (zoos) to prevent escape of those animals into the wider environment. It is approved under the Hazardous Substances and New Organisms Act 1996 (HSNO Act), which assists with protecting the environment and people by preventing or managing risks from new organisms. Therefore, it does not include the requirements of any other legislation that must be met by zoos, such as the Biosecurity Act 1993, the Animal Welfare Act 1999, or the Health and Safety at Work Act 2015.

The proposed standard contains outcome-based requirements, and requires zoos to develop a Quality Management System (QMS) that describes specific measures they have in place to meet those outcomes.

The proposed standard, if approved by the Environmental Protection Authority (EPA) under section 11(1)(fc) of the HSNO Act, will replace the MAF Biosecurity New Zealand Standard 154.03.04 Containment Facilities for Zoo Animals (current standard).

Background

The current standard was approved by the Environmental Risk Management Authority under the HSNO Act, and replaced the Zoological Gardens Regulations 1977 that were revoked on 28 July 2003. The current standard contains outdated information, such as previous government agency names and logos, and signing authorities. It also contains provisions relating to animal welfare and workplace safety and health, which are outside the scope of the HSNO Act.

In addition, the current standard consists of prescriptive requirements, which are out-of-date, and too rigid to keep pace with the constantly evolving international best practices and innovation.

Therefore, a new outcome-based standard is being proposed, which puts more emphasis on specifying a performance standard for the desired outcome and does not constrain how compliance is to be achieved. This approach will allow more flexibility for innovation and efficiency than prescriptive regulation.

To ensure effective enforcement and quality assurance, the proposed standard will be supported by the zoo's QMS that will provide specific measures to describe how each zoo will comply with the requirements of the proposed standard.

Consultation

The consultation on the proposed standard commenced on 16 January 2018 and ended on 27 February 2018.

The following documents were made available on the EPA website, and sent to interested parties, who the EPA considered would likely have an interest in the proposed standard in accordance with section 11(2) of the HSNO Act:

- consultation information;
- submission form; and
- the proposed standard.

The consultation information document was divided into two parts:

- The first part contained the introduction and general information for users of the standard, to help them understand the requirements specified in the second part; and
- The second part set out the requirements that must be met for a place to be approved, and continue to operate, as a zoo containment facility.

The document sought feedback on 10 questions regarding the proposed standard. A list of those questions is attached as Appendix 2.

Submissions received

Three submissions were received during the consultation period, representing views from a central government agency and industry group. A list of submitters is attached as Appendix 1.

One submitter requested that their submission be reported anonymously (Submitter A).

All submissions are available on the EPA website, with confidential information redacted as appropriate.

Many comments received from the submitters did not specifically relate to the requirements of the proposed standard, but concerned the enforcement of, or the compliance with, the standard.

Submitter A expressed a number of concerns regarding the lack of prescriptive requirements in the proposed standard.

Some comments related to transitional facilities, which are approved and regulated by MPI under the Biosecurity Act 1993.

Few amendments were proposed to improve clarity and reduce uncertainty.

Key themes raised in submissions

The main concerns expressed by the submitters are as follows:

- Lack of information about how the requirements of the proposed standard could be complied with by zoos and enforced by MPI (for example, how would compliance be measured, and what guidance material would MPI use for their enforcement activities?);
- Lack of information about the consequences of non-compliance; and

- No distinction between species based on their environmental 'risk' (i.e. dangerous and non-dangerous zoo animals).

The main concerns, along with the EPA responses, are discussed in more detail in the submission analysis below.

References to the clauses of the proposed standard

After considering the submissions, the EPA made minor changes to the proposed standard to improve clarity and reduce uncertainty, and this resulted in changes to clause numbers. In the submission analysis, questions and summary of submitter comments refer to the previous clause numbers, and the EPA response refers to the updated clause numbers.

Disclaimer

The contents of this report on submissions do not reflect final EPA policy. Words and details that form part of the document do not necessarily reflect settled terminology and may change in the process of approving the standard. This document does not alter the laws of New Zealand and the EPA does not accept any responsibility or liability to any person, whether in contract, equity or tort, or any other legal principle, for any direct or indirect losses or damage arising from reliance on the contents of this document.

Submission analysis

Question Number	Summary of submitter comment	EPA Response
<p>Question 1</p> <p>Is the level of detail appropriate?</p>	<p>Two submitters (Otago Museum and Submitter A) responded to this question.</p> <p>Concern</p> <p>Both submitters were concerned that the lack of prescriptive requirements might result in the proposed standard being complied with by zoos and enforced by MPI inconsistently.</p>	<p>We understand the concerns from the submitters.</p> <p>The proposed standard contains outcome-based requirements, which put more emphasis on specifying a performance standard for the desired outcome and do not constrain how compliance is to be achieved. This approach will allow more flexibility for innovation and efficiency than prescriptive regulation.</p> <p>To ensure effective enforcement and quality assurance, the proposed standard, if approved, will be supported by a QMS for each zoo that will provide specific measures to prevent the escape of zoo animals. Before MPI approves a zoo as a containment facility under the Biosecurity Act 1993, each zoo QMS will be reviewed, with the support of zoo experts when necessary, to ensure the adequacy of those measures to comply with the relevant legal requirements. This will help MPI enforce the standard consistently, and ensure that risks are managed appropriately.</p>
<p>Question 2</p> <p>Are the technical aspects correct?</p>	<p>No specific comment on this question.</p>	
<p>Question 3</p> <p>Are the requirements practical and achievable?</p>	<p>Two submitters (Otago Museum and Submitter A) responded to this question.</p> <p>Support</p> <p>Otago Museum agreed that the requirements are practical and achievable by stating that all requirements appeared to be manageable within the proposed timeframe.</p>	<p>As explained in Question 1 above, the proposed standard, if approved, will be supported by a QMS.</p>

Question Number	Summary of submitter comment	EPA Response
	<p>Concerns</p> <p>Submitter A expressed concern that the lack of any clear description of the resources MPI might use to audit compliance could not possibly lead to uniform interpretation of the rules by both MPI inspectors and registered operators throughout the country.</p>	
<p>Question 4</p> <p>Are there any areas that need more guidance?</p>	<p>Two submitters (Otago Museum and Submitter A) responded to this question.</p> <p>Concerns</p> <p>Otago Museum made comments and expressed concerns about transitional facilities.</p> <p>Submitter A recommended that the EPA and MPI called a meeting of all New Zealand zoos to discuss the proposed standard, given the concerns they had (to ensure that the new standard was effective in achieving the desired outcomes).</p>	<p>The concerns raised by the Otago Museum relate to transitional facilities, which are approved and regulated by MPI under the Biosecurity Act 1993. Therefore, they fall outside the scope of the HSNO Act and the proposed standard.</p> <p>Submitter A's key concern was that the lack of prescriptive requirements or guidelines might lead to the proposed standard being complied with by zoos and enforced by MPI inconsistently. As explained in Question 1 above, the proposed standard, if approved, will be supported by a QMS.</p>
<p>Question 5</p> <p>Is the proposed one-year transition period between the date of commencement of the proposed standard (1 July 2018) and 30 June 2019 appropriate?</p>	<p>Two submitters (Otago Museum and Submitter A) responded to this question.</p> <p>Support</p> <p>These two submitters considered that the proposed one-year transition period was adequate.</p> <p>Submitter A stated that the period should be extended if the new standard was not in place by 1 July 2018.</p>	<p>There will be a one-year transitional period after the date the proposed standard, if approved, comes into force.</p>
<p>Question 6</p> <p>Are the requirements regarding significant modifications to the construction of the zoo</p>	<p>Two submitters (MPI and Submitter A) responded to this question.</p> <p>Proposed amendment to the proposed standard</p>	<p>We made minor changes to the proposed standard after considering MPI's comments (clauses 2.5.1 and 2.5.2).</p> <p>As explained in Question 1 above, the proposed standard, if approved, will be supported by a QMS.</p>

Question Number	Summary of submitter comment	EPA Response
<p>containment facility and the operation of the facility sufficient?</p>	<p>MPI proposed to combine clauses relating to significant modifications to the construction and/or the operation of the facility subsequent to the facility approval.</p> <p>Concerns</p> <p>Submitter A considered more information was needed to explain how compliance would be measured, and how the standard would be enforced, by MPI.</p>	
<p>Question 7</p> <p>Are the requirements for monitoring and inspection sufficient? Is a six-monthly internal audit appropriate?</p>	<p>Three submitters (MPI, Otago Museum and Submitter A) responded to this question.</p> <p>Proposed amendment to the proposed standard</p> <p>MPI suggested additional matters, such as name of the auditor and inspection areas, be included in the internal audit reports.</p> <p>Support</p> <p>Submitter A and Otago Museum were supportive of the proposed requirements for monitoring and inspection, and the six-monthly internal audit.</p>	<p>We made minor changes to the proposed standard after considering MPI's comments (clause 2.8.6).</p>
<p>Question 8</p> <p>Are the Quality Management System (QMS) and the policies and procedures that need to be referred to in the QMS as described in clause 2.8 sufficient to support an outcome-based standard? Is a 12-monthly review of the QMS appropriate?</p>	<p>Two submitters (Otago Museum and Submitter A) responded to this question.</p> <p>Support</p> <p>Submitter A agreed that a review of the QMS every 12 months was appropriate.</p> <p>Concerns</p> <p>Otago Museum considered that more information was needed in the proposed standard to specify who would carry out the QMS review and how any changes identified would be implemented.</p>	<p>As explained in Question 1 above, prior to the approval of a zoo as a containment facility, any proposed QMS will be reviewed by MPI, with the support of zoo experts when necessary.</p> <p>The proposed standard, if approved, requires the operator of the zoo facility to review and update the QMS, where necessary, at least once every 12 months (clause 2.9.7). In addition, relevant parts of the QMS and any relevant policies, processes, or procedures must be reviewed and updated prior to the acquisition of a species of new organism new to the zoo containment facility, and following any breach of containment or other failure to comply with the standard or QMS (clause 2.9.8). Records</p>

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	<p>Submitter A stated that the policies and procedures, that were required to be referred to in the QMS, were not adequate to support an outcome-based standard.</p>	<p>must be kept of all QMS reviews and updates (clause 2.9.9). A copy of the QMS, or the modified part of the QMS, must be provided to MPI as soon as practicable following any changes (including the addition of new containment areas) to the QMS (clause 2.9.10).</p> <p>Submitter A did not specify a reason why they believed the policies and procedures were not adequate. However, the QMS for each zoo, together with any relevant policies and procedures, will be reviewed by MPI, with the support of zoo experts when necessary.</p>
<p>Question 9</p> <p>Is the requirement to keep records under clause 2.9 sufficient? Is the minimum period of 7 years to keep records appropriate?</p>	<p>Two submitters (Otago Museum and Submitter A) responded to this question.</p> <p>Support</p> <p>Both submitters were supportive of the proposed requirement to keep records as specified in clause 2.9.</p>	

Question Number	Summary of submitter comment	EPA Response
<p>Question 10</p> <p>Do you consider that there are any other matters that should be addressed as part of this standard?</p>	<p>Three submitters (MPI, Otago Museum, and Submitter A) responded to this question.</p> <p>Concerns on outcome-based standard</p> <p>Submitter A was concerned that the proposed standard might not be complied with or enforced consistently, because the proposed standard:</p> <ul style="list-style-type: none"> lacked prescriptive requirements on how compliance would be measured and was not readily auditable; and did not specify which resource or guidelines(e.g. the “Best Practice Guidelines”) MPI inspectors would use or endorse to measure compliance. <p>The submitter was also concerned that there was no distinction between dangerous and non-dangerous species, where every breach, regardless of the actual risk, would be considered as a critical incident. Submitter A believed that such a distinction would allow zoos to adopt innovative practices, especially for non-dangerous animals.</p> <p>Comments outside the scope of the proposed standard</p> <p>Otago Museum considered the following information should be included in the proposed standard:</p> <ul style="list-style-type: none"> Animal Welfare specification; Application fee for approval as an operating facility and how often the fee is required; and Information on how MPI will respond to containment breaches. <p>Submitter A was concerned that the proposed standard lacked information or details about:</p>	<p>We acknowledge the submitters’ views on the proposed standard.</p> <p>Concerns on outcome-based standard</p> <p>As explained above, the proposed standard puts more emphasis on specifying a performance standard for the desired outcome and does not constrain how compliance is to be achieved. This approach will allow more flexibility for innovation and efficiency than a prescriptive standard. For example, the proposed standard requires new organisms to be contained in the zoo containment facility at all times, but does not prescribe how containment should be achieved. This would allow zoos to take innovative practices for certain zoo animals, while ensuring the containment of those animals.</p> <p>To ensure effective enforcement and quality assurance, the proposed standard, if approved, will be supported by a QMS.</p> <p>Furthermore, under the HSNO Act, the determination of ‘new organism’ is a binary identification (i.e. whether an organism is a new organism or not). The EPA carries out an assessment of the adverse effects of the new organism when considering an application for approval but there is no distinction made between “dangerous” and “non-dangerous” new organisms. Therefore, it would be difficult to make such a distinction in the standard.</p> <p>Comments outside the scope of the proposed standard</p> <p>The matters specified by Otago Museum and Submitter A fall outside the scope of the proposed standard, because:</p> <ul style="list-style-type: none"> transitional facilities are approved and regulated by MPI under the Biosecurity Act 1993; the proposed standard, once approved, will be enforced by MPI under the Biosecurity Act 1993. The failure to comply with the standard also constitutes an offence under the HSNO Act, where

Question Number	Summary of submitter comment	EPA Response
	<ul style="list-style-type: none"> • the consequences of, and penalties for, non-compliance; • what containment facility approvals may specify, and when and how the approvals would be enforced by MPI; and • appeal process for zoos who wish to challenge MPI's enforcement actions. <p><i>Proposed amendments to the proposed standard</i></p> <p>MPI suggested the following:</p> <ul style="list-style-type: none"> • amend clauses relating to contingency plan to improve clarity and certainty. • clarify the scope of the requirement under clause 2.2.2, where zoo containment facilities were required to comply with only the containment-specific requirements of the QMS. <p>Submitter A proposed the following:</p> <ul style="list-style-type: none"> • amend clause 2.4.6 to state 'reasonably deter' instead of 'prevent' as it was almost impossible for boundary fence or containment area barriers to prevent a determined unauthorised person from entering. The submitter was concerned that some zoos could be unreasonably penalised; • state the purpose of the HSNO Act in the introduction and information for users section of the proposed standard; and • amend clause 2.2.3 to clarify whether the new organism was required to be contained within a specified containment area or the zoo containment facility. • amend clause 2.6.3 to state 'manager on call' instead of 'manager on duty'. 	<p>such requirement is imposed as a control on the HSNO Act approval for a new organism. The consequences of non-compliance and related appeal process are set out in the Biosecurity Act 1993;</p> <ul style="list-style-type: none"> • Under section 39(6) of the Biosecurity Act 1993, a containment facility approval may specify the new organisms that may be held in the zoos. The proposed standard provides general information about what a containment facility approval 'may' specify, but does not confirm that the approval will specify all of the items listed in the proposed standard; • application fees for approval as a containment facility or a transitional facility are prescribed under the Biosecurity (Costs) Regulations 2010. These are the charges for services provided by MPI; and • animal welfare aspect of zoos are regulated by MPI under the Animal Welfare Act 1999. <p><i>Proposed amendments to the proposed standard</i></p> <p>We made minor changes to the proposed standard after considering MPI's comments (clauses 2.2.2 and 2.4.11).</p> <p>Our response to Submitter A's comments is as follows:</p> <ul style="list-style-type: none"> • The operators would not be considered to be in breach of clause 2.4.3 as long as all reasonable steps have been taken to design and operate the zoo containment facility to prevent access except in accordance with the QMS. Therefore, no amendment would be required. • The purpose of the HSNO Act is not stated in the proposed standard because the standard is approved under the HSNO Act and implies the same purpose.

Question Number	Summary of submitter comment	EPA Response
	<ul style="list-style-type: none"><li data-bbox="510 256 1205 352">Amend clause 2.4.10 to clarify that the requirement to treat waste applies only when the waste is to be removed from the zoo containment facility.	<ul style="list-style-type: none"><li data-bbox="1265 256 2024 392">We made minor changes to the proposed standard after considering Submitter A's comments regarding the treatment of waste, the place of containment, and 'manager on duty' (clauses 2.2.3, 2.4.7, 2.7.3, and 2.7.4).

Appendix 1. List of Submitters

Submitter #	Name	Organisation	Organisation Type
1	Vicki Melville	Ministry for Primary Industries	Government agency
2	Submitter A		
3	Eden Gray and Samantha Botting	Otago Museum	Industry group

Appendix 2. List of proposals and questions

A list of the questions included in the January 2018 consultation documents is provided below:

Question 1. Is the level of detail appropriate?

Question 2. Are the technical aspects correct?

Question 3. Are the requirements practical and achievable?

Question 4. Are there any areas that need more guidance?

Question 5. Is the proposed one-year transition period between the date of commencement of the proposed standard (1 July 2018) and 30 June 2019 appropriate?

Question 6. Are the requirements regarding significant modifications to the construction of the zoo containment facility and the operation of the facility sufficient?

Question 7. Are the requirements for monitoring and inspection sufficient? Is a six-monthly internal audit appropriate?

Question 8. Are the Quality Management System (QMS) and the policies and procedures that need to be referred to in the QMS as described in clause 2.8 sufficient to support an outcome-based standard? Is a 12-monthly review of the QMS appropriate?

Question 9. Is the requirement to keep records under clause 2.9 sufficient? Is the minimum period of 7 years to keep records appropriate?

Question 10. Do you consider that there are any other matters that should be addressed as part of this standard?