



New Zealand Institute of Forestry

Te Pūtahī Ngāherehere o Aotearoa Incorporated

Issues Paper: New Zealand's Legal Harvest Assurance System

Forest Market Assurance Programme

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05 May 2024



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Introductory Comments

Thank you for the opportunity to submit on the Legal Harvest Assurance System Document.

If appropriate, the New Zealand Institute of Forestry (NZIF) wishes to be heard in support of its submission.

About the Submitter

The New Zealand Institute of Forestry (NZIF) was incorporated in 1929. It has approximately 800 members who are individual professionals in forestry. The NZIF's objects are to advance the profession of forestry in New Zealand and to be an independent advocate for forestry.

The NZIF is committed to serving the practice of forestry and the wider community through education, accountability and its code of ethics and performance standards. It fulfils a quality assurance role, setting the benchmark for professionalism and the quality of advice and practice by which members and others in the profession are measured.

NZIF members are concerned with the professional management of all forests, plantation and natural, conservation, protection and commercial. They can be found in forestry companies, consulting businesses, research institutes, educational facilities, government departments and providers of specialist services.

The members' qualifications and areas of expertise reflect the diversity of disciplines involved in managing all types of the NZ forest resource from traditional forestry degrees through science, economics, law, microbiology, hydrology, engineering, and resource management.

NZIF operates a regulated registration scheme which controls the registration and conduct of forestry professionals, whether they are consultants providing forestry advice to the public and private entities or acting in other roles.

General Comments

As an initial comment NZIF records that it last made a submission on this topic in 2022. In that submission (attached as Appendix 1) we noted amongst other matters:

6(d) (NZIF) 'Urges that in giving effect to this Bill, NZIF believe it to be important that all efforts are made to keep the systems and processes involved in legal wood verification as simple and costless as possible'.

AND

7) 'The primary concern NZIF have in respect of this Bill is that it merely expresses the framework mechanism by which the law is given effect. All detail is to be drafted under Regulation. On this basis it is very difficult to ascertain whether the resulting enforceable law will be impractical, onerous and expensive or appropriate and cost effective for the risks at play'.

It is accepted that this round of consultation (as promised) is an effort to refine thinking before regulations are drafted. However, we express concern that with no 'strawman' or pro-forma explanation of the current thinking of officials nor any rationale that defines why a particular regulatory landscape

might be the current state of thinking, it remains very difficult to usefully contribute. One would have hoped that given the intervening years and presumably ongoing research and investigation into both the development of internationally comparable models and fleshing out of draft regulatory positions perceived as required to give effect to the Act, consultation could then have been much more focused upon what would and would not cause difficulties and what might need to be rectified.

Notwithstanding this concern, NZIF's submission follows below.

Submission

When is timber legally harvested?

Assumptions about relevant harvest laws

We have made the following assumptions about identifying relevant harvest laws:

- Only conduct directly related to the harvesting operation should be regulated by the legal harvest system. Conduct not directly related to the harvest is not relevant to the legality of harvest as is managed by other laws.
- Current international forums are supportive of reducing the risk of trading in illegally harvested timber and therefore will have, or are developing, appropriate harvest laws or systems.
- If a legal harvest system is in place in the trading partner's jurisdiction, this provides evidence the risk of trading in illegally harvested timber is being managed.

We want your feedback on assumptions we can make about relevant harvest laws.

Do you agree with these assumptions? Why or why not?

- Yes
 No
 Not sure

NZIF broadly agree with the assumptions. However, in the NZ context, legal harvest verification should be focused on the right to harvest (ownership/ licence / permit to access etc). Extending regulatory reach into matters covered by the RMA will become excessively complex, bureaucratic, expensive and highly problematic. For instance, if an operation starts without a required resource consent under the RMA then it is by definition 'illegal'. However, the RMA and its processes should establish that fact and rapidly ensure either rectification of the situation or cessation of the harvest. If an operation in process is assessed by a Council to be in minor breach or a technical breach does this mean the wood is illegal. If so, how would the "illegal wood be recalled". If it was a major breach at a point in time, rectification would be required, or the operation stopped. At what point would timber harvested prior to the point in time be deemed illegal and how would it be recalled?

The point is, illegal harvest regulation cannot make every cubic meter legal, but in conjunction with existing functional law (such as the RMA) can make the risk and quantum of illegal wood being exported very low.



Are there any other assumptions you think we can make?

- Yes
- No
- Not sure

Relevant harvest laws

Relevant laws in New Zealand

We want your feedback about what laws you think are relevant to legal harvest in New Zealand.

What statutory laws/Acts and regulations do you think are relevant?

As implied previously there are a significant number of laws and regulations all of which serve to underpin the legality of timber harvest or a harvesting operation. These include the RMA, Heritage New Zealand Pouhere Taonga Act, Health and Safety at Work Act etc. The distinction of most of these however is that they are “self-regulating” in that as described previously, any breaches normally reflect a point in time and place and are managed and corrected via the processes involved in the legislation themselves. As such their implementation in NZ is a relevant part of NZ’s assurance that volumes of timber are legally harvested or in the contrary the risk and quantum of illegal export is very low.

As such, while recognized as part of NZ’s legal harvest framework, they should not be a requirement for individual site and time compliance disclosure from a harvesting operation. That should be restricted solely to evidence of contracts, ownership, and access rights.

What common law/law from the Courts do you think is relevant?

In terms of verifying demonstrable wood legality to 3rd parties. Only common law related to contractual exchange, licensing, leasing or rights of access should be within scope.

What tikanga or other customary law do you think are relevant?

Given the requirement for national consistency, the processes embedded in the RMA and Heritage NZ Acts where consents or Authorities are required, automatically build in consultation requirements with relevant Iwi and their environmental management plans where they exist. In terms of matters of permit to access and authority and ownership – required Māori protocols will be addressed with any specific iwi as the situation and their interests demand.

If you export, what information about legal compliance are you being asked for, and by whom, when you are exporting timber or timber products?

NA.- NZIF as an organisation is not directly involved in export.

Are there any other matters you think should be included in deciding if timber or timber products are legally harvested in New Zealand?

- Yes
- No
- Not sure

ETS rights and obligations and any other covenants existing over a block of land or the trees on it must be clarified and included in documentation verifying access and ownership or purchase rights.

Please describe any other matters you think should be included:

Any of the two internationally accepted certification schemes should provide for automatic verification of legality, subject to a current certificate since following the laws of the nation is a first principle of these schemes along with all the other principles and criterion, some of which also cover the international agreements such as CITES and indigenous peoples' rights and customs including informed consent.

Relevant harvest laws for products coming into New Zealand

See page 10

We want your feedback on what harvest laws are relevant for countries other than New Zealand.

What checks are you already doing to make sure you aren't importing illegally harvested timber or timber products?

NA. NZIF is not directly involved in importations.

Which countries do you import from?

NA. NZIF is not directly involved in importations.

Do you know where to get information about harvest laws in the countries you import from?

- Yes
- No
- Not sure

Do you think a notice should be made to identify relevant laws for any countries New Zealand trades with?

- Yes
- No
- Not sure

If yes, which countries and which laws should be identified?

This is likely to be of most assistance to parties importing timber and timber products of a specialty nature and from developing nations, particularly where quantities are low. Those regularly involved in the market and at scale presumably are familiar with the importation requirements of their customer.

It may be useful for MPI or Customs to run an alert system that flags new changes in common importing country requirements to parties registered as dealing in specified timber products.



Are there any other matters you think should be included in deciding if timber or timber products are legally harvested in countries other than New Zealand?

- Yes
 No
 Not sure

Please provide reason/s for your answer:

Any of the two internationally accepted certification schemes should provide for automatic verification of legality, subject to a current certificate since following the laws of the nation is a first principle of these schemes along with all the other principles and criterion, some of which also cover the international agreements such as CITES and indigenous peoples' rights and customs including informed consent.

Regulated timber and specified timber products

Assumptions about identifying regulated timber and specified timber products

See page 11

We have made the following assumptions about identifying regulated timber and specified timber products:

- Indigenous timber and timber products do not need to be part of legal harvest because regulation under Part 3A of the Forests Act 1949 is sufficient to manage the risk of illegal harvest and ensure market access;
- People trading in timber or timber products from planted indigenous forests will voluntarily register for legal harvest assurance if they require proof of legal harvest for market access.

We want your feedback on assumptions we can make about specified timber products and regulated timber products.

Do you agree with these assumptions? Why or why not?

- Yes
 No
 Not sure

Please provide reason/s for your answer:

As with any exotic forest, any harvesting of any indigenous timber is also subject to the RMA and other legislative requirements applying to the operation at a point in time and space. It follows, that if these elements are not part of the consideration required for proving legality in addition to the presence of a registered current Sustainable Forest Management Plan or Permit under the Forests Act, then neither should they be a consideration in any exotic harvest operating under a current international forest certification scheme or if not, the basic provisions of permit, access, ownership or authority documentation.



Are there any other assumptions you think we can make?

- Yes
- No
- Not sure

Please provide reason/s for your answer:

[Click here to enter text.](#)

Specified timber products

See page12

We want your feedback on specified timber products. When answering the questions below, you may choose to provide tariff codes or general descriptions of products to help explain your views.

What products made from exotic species should legal harvest requirements apply to?

Under Secn 4.4 pg 11 ‘Regulated Timber’ the text refers to the intent that “regulation is proportionate to the risk of losing market access and/or timber being illegally sourced”. Also, that “exotic timber species should only be excluded from being regulated if there is a very low risk that it may be illegally sourced or may lose market access by not being part of a legal harvest system”.

It is NZIF’s view that if it can be shown that there is a real threat to market access due to the actions of our recipient markets then almost all products from exotic species will need to be subject to legal harvest requirements even though the overall risk is very low. There is a tension between the objectives in Secn 4.4. Given the conflict, if market access prevails as the rationale for legal harvest requirements, then the onus is to adopt the lowest cost and least complex means possible to meet the requirement given the low inherent risk of illegal harvest in NZ. See prior comments re focus on access, ownership and authority, or use of certification.

Officials should take care liaise closely with industry before any decision is made based on actual and perceived levels of threat to access.

What Tariff Codes should be included or excluded from legal harvest assurance?

NZIF have no particular view – decisions should be based directly from discussions with those involve in export and import.

Are there any products made from indigenous species of New Zealand timber that should be included in legal harvest requirements?

- Yes
- No
- Not sure

Please provide reason/s for your answer:

Given that any export of indigenous timbers as finished or semi-finished product is very small, and no indigenous timbers can be harvested without a SFMP or permit and given prior sections implying that such plans and permits would suffice to verify legal harvest, it seems there would be little involved in including indigenous timbers in the legal harvest requirements. The counter may be that the quantities are so small it's almost irrelevant and the most impacted parties might be tourism related businesses selling small items made of indigenous timber products. The cost may or may not exceed any benefit including sales advantage to scrupulous purchasers.

What Tariff Codes should be included?

NZIF have no particular view – decisions should be based directly from discussions with those involve in export and import.

How should products with a timber component be identified in the system?

NZIF have no particular view – decisions should be based directly from discussions with those involve in export and import.

What Tariff Codes, if any, could apply to products with a timber component that you think should be included in the legal harvest assurance system?

NZIF have no particular view – decisions should be based directly from discussions with those involve in export and import.

Thresholds for registering for legal harvest assurance products

Assumptions about thresholds for registering for legal harvest assurance

See page 13

We have made the following assumptions about thresholds for registering for legal harvest assurance:

- Specified timber products are not a uniform class of products: they can vary from unprocessed logs through to highly processed products with non-timber elements.
- Thresholds that are proportionate to the risk are needed to enable businesses to grow and continue to operate, particularly small businesses.
- The cost of regulating all parties is disproportionate to the risk.

We want your feedback on assumptions we can make about thresholds for trade before a person must comply with legal harvest requirements.

Do you agree with these assumptions? Why or why not?

- Yes
 No
 Not sure

Please provide reason/s for your answer:

The critical factors here are:

- The nature of the system and the complexity in meeting its requirements – a matter that is not yet clear from the documentation provided. But, it is assumed to be a function of internal decisions to be made by MPI such as whether it anticipates including/excluding compliance proof beyond access, ownership and authority and,
- The relative proportionate risk, which in the NZ context, NZIF would assess as low.

Any final threshold decision is further confounded by the fact that:

- If a product is to be specified because of actual or perceived risk of illegality by one trading partner, then capability to demonstrate the legal harvest assurance requirement applies, as we understand it, to any producers of that regulated timber and specified timber product throughout NZ, though it will only be implemented in a documentary or verification sense for the country requiring the verification.
- In the NZ context the highest likely probability of illegal harvest, albeit at smaller scale in product volume terms, is amongst relatively small players.

There are thus inherent tensions in trying to sort a workable system. The first priority must be to establish 'what coverage in law and documentation is required to address the perceived level of risk to export access. The initial starting point for any discussion should be informed by how this matter is being addressed in overseas jurisdictions, particularly those with greatest similarity to NZ.

Are there any other assumptions you think we can make?

- Yes
 No
 Not sure

Please provide reason/s for your answer.

[Click here to enter text.](#)



Setting thresholds

See page 14

We want your feedback on setting thresholds for registration.

Should there be a threshold that needs to be met before a person needs to register for legal harvest assurance?

- Yes
- No
- Not sure

Please provide reason/s for your answer.

Logically there should be some deminimis threshold below which an individual party would not need to be concerned about proving legality. In the forestry /harvesting sphere this might apply to a party harvesting a few cubic metres from a shelter belt on a farm. However further down the supply chain particularly in finished products that include regulated timber the situation becomes much more complex and potentially the smaller the scale of the exporting businesses the more the cost and complexity imposition escalates. NZIF suggest different thresholds will need to be established for a range of sub sectors along the timber export supply chains.

Another consideration in the forestry harvesting sub-sector is that most parties selling logs or acting as agents for a forest owner, even down to woodlot level, will have some form of electronic load accounting system which if the requirements of legality were kept suitably simple, may be able to be adapted relatively cheaply to include reference to required documentation. This might include adaptation of existing certification CoC systems used by a large part of the forest growing and log/primary processing segments. This might mean that at the log procurement end of the chain, almost any scale of harvest could be accommodated, freeing the decisions on thresholds to be matched appropriately to the nature of the next and varied stages of processing and manufacture up the supply chain. If any system that eventuates is complex however then it is likely to become very costly to implement even for forest owners / log purchasers and thresholds at that level will need to be considered notwithstanding the risk of illegal harvest will likely rest at the small end of the scale.

Within the context of indigenous species, NZIF would concur with the notion that SFMP's and permits should form the basis of proof of legality and be exempted from the regulations except on a voluntary basis which would be a decision by the forest owner and any linked processing in order to secure market access.

What measure should be used to set thresholds?

Should all thresholds be set by reference to the same measurement type e.g., all thresholds be set by volume (or another measurement)?

- Yes
- No
- Not sure



Please provide reason/s for your answer.

While volumetric or tonne equivalent measure are appropriate for harvest and primary processing since exchanges and payment are made on the same basis, further steps in the processing and manufacturing chains may require completely different measure e.g units of production for manufactured products that include a regulated timber.

Appropriate and workable thresholds and units of measure should be determined by direct engagement with relevant sub sectors.

What information do you already collect about the amount of goods you are importing or exporting, e.g., volume, value, number of units, or other measurement?

Do you provide this information to anyone?

- Yes
- No
- Not sure

NZIF membership involved in forestry log sales or procurement will almost inevitably be collecting information on procurement, sales and contract payments on the basis of cubic metres, or tonne equivalents.

If yes, who do you provide it to and how often?

Such information will be passed up the value chain – anything from real time to daily or monthly. Environmentally certified companies will in some form, through their electronic sales and harvesting management systems, also have tagged with each load, a unique (to them) chain of custody number.

How often and when should thresholds be reviewed and change over time?

NZIF have no particular view – it should depend upon the nature of the sub-sector in the value chain. The most important initial step is that review be provided for on a flexible basis.

Due diligence system for registered person

Assumptions about due diligence systems

See page 15

We have made the following assumptions about due diligence systems for registered people:

- Registered people will be able to accurately assess the risks associated with the legality of the harvest of their timber and/or specified timber products.
- Registered people will have information about legality of harvest available for their timber and specified timber products.
- The legal harvest statement (in New Zealand) or legal harvest information (from overseas countries where harvest happened for imports) will be passed along the chain supply.

We want your feedback on assumptions we can make about due diligence systems.

Do you agree with these assumptions? Why or why not?

- Yes
 No
 Not sure

Please provide reason/s for your answer:

Without a chain of custody (CoC) system forming the core of a due diligence system, supply chain entities beyond the initial harvest of logs may have very poor visibility of information and risks associated with timber they use. They would be placing faith in the initial log supplier and any information they supplied.

The environmental certification schemes do provide chain of custody and as already discussed, if, given the principles and criteria of the schemes, a current certificate/chain of custody number is supplied, then that should suffice all the way up the chain provided each further step up the chain also has a mechanism to carry on the CoC.

This situation would ONLY apply to those parties involved in the certification schemes.

If instead, a party procuring logs is required to provide some form of evidence associated with ownership, authority etc for each load of logs, this might well still be codified and provided for in electronic load and invoicing systems. However, if that information was required to provide for recognition of each change in forest owner source, the complications for inventory control in each upstream processor rises exponentially and the costs would be prohibitive.

The implications are that any due diligence evidential system must be able to be reduced to the basic level of a 'registration code' of a forest owner or log procurement entity that has had its systems for establishing legality officially approved. From that point on up the chain, only that code will be required. This does not alter the fact that for primary or secondary processors who acquire logs from multiple sources inventory management becomes more costly and complex unless the system at first processor step converts to an exception basis whereby only logs not derived from an approved registered supplier have to be separated and processed without the subsequent attachment and follow-on of registered codes.



Are there any other assumptions you think we can make?

- Yes
- No
- Not sure

Please provide reason/s for your answer:

[Click here to enter text.](#)

Requirements of a due diligence system

See pages 15 – 16

We want your feedback on due diligence system requirements.

What should the requirements of a due diligence system be?

- Verification of ownership of the trees.
 - Verification of sale and purchase of trees.
 - Verification of ownership or right to occupy land under trees.
 - Verification of right to access land on which trees stand.
 - Verification of ETS obligations.
 - Verification of 'Forestry Right' where relevant.
 - Verification that land or trees are not part of Treaty Settlement holding.
 - Authority or iwi or iwi authority where forest owned by iwi or iwi authority.
- A number of these will likely be jointly verifiable in many cases.

Should chain of custody information be required as part of a due diligence system?

- Yes
- No
- Not sure

Please provide reason/s for your answer:

All forestry sector parties already involved in the procurement and processing of FSC or PEFC certified wood products already must have audited CoC systems in place. For those at the initial forest/log procurement step, who only work in certified forests, the acceptance of those certified schemes as reducing the risk of illegal harvest to near zero, would mean they could continue on a business-as-usual basis. For those who deal in mixed sources, minor change in CoC systems to accept either the certification code or an authorised legal harvest assurance code would also likely be practical.

For parties who are involved with uncertified log sources only they could:

- Either obtain chain of custody certification only (not the full forest management environmental certification) which still requires that supplied wood be legal. This would be relatively costly and inefficient, especially at a woodlot scale and impractical if a small woodlot owner was selling their own wood. Or
- Operate under a bifurcated parallel system where those with certification scheme CoC certificates operate under those, while those who don't gain some form of alternate registration through a MPI orchestrated system. At its very simplest, especially for woodlot owners selling their own wood (if not below a registration threshold), it might be submitting title information /proof of ownership in an identity (RealMe) confirmed system that then returns a unique registration code to be passed on to any purchaser.

What matters should be required to demonstrate elimination or mitigation of the risks of dealing in illegally harvested timber?

As already stated, NZIF believe legality should be restricted to matters of proof of ownership, authority to
It is unclear what is intended here. Who is to demonstrate the size of the risk? And who is it being demonstrated to - MPI or international markets?

Nationally NZ exports 10's of millions of tonnes of forest products each year, but the percentage probability of any one tonne being illegal is miniscule.

If a forest owner or a forest management or log procurement organisation operated to a certification system CoC then they are audited each year that the CoC systems are being adhered to. Supporting evidence is required to be available during those audits.

For those not operating to an established certification CoC system requirements for supporting evidence as to the scale of the risk is entirely dependent upon the nature of the alternate system MPI might finally introduce.

When should supporting evidence be required for demonstrating the size of the risk?

When, and how often, should evidence be required to demonstrate the:

- risk; and
- risk mitigation?

The terms above are not particularly helpful. The risk is what... the quantum of logs that might be illegally sourced? Or the probability of an entity supplying timber products operating illegally? In either case the probability of a large quantity of logs or a large number of illegal operations is low.

Risk mitigation IS the registration process and the systems that underpin it including audit.

NZIF suggest that this can be assessed at a national level by MPI once a system is introduced and would be based on the results of any sampling audit program. Given the relatively low probabilities of illegal export supplies of illegal timber we would expect that requirements for the provision of evidential material supporting system function would be no more than annual at most. This would align with those already operating under environmental certification scheme CoC systems.

Exporter Statements and requirements

Assumptions about Exporter Statements and requirements

See page 17

We have made the following assumptions about Exporter Statements and requirements.

- Exporter Statements will replace the existing administrative arrangement for countries that require government assurance for market access.
- Exporters will be consulted on new requirements set by the New Zealand Government, but not for requirements set by overseas markets.
- Exporter Statements will meet the requirements of overseas countries to provide Government assurance of legal harvest.
- Exporter Statements will only be issued where Government assurance of legal harvest is required.

We want your feedback on assumptions we can make about exporter requirements.

Do you agree with these assumptions? Why or why not?

- Yes
 No
 Not sure

Please provide reason/s for your answer:

NZIF have no particular view in respect of the exporter statement assumptions. NZIF concur that MPI should consult directly with exporters (across all levels that may be affected) on the final content and format of such statements, notwithstanding the requirements of other jurisdictions will be non-negotiable.

Are there any other assumptions you think we can make?

- Yes
 No
 Not sure

Please provide reason/s for your answer:

NA

Setting exporter requirements

See page 18

We want your feedback on exporter requirements.

What information are you being asked for to land your goods in an overseas market?

NZIF is not in a position to answer this.

What existing export requirements set by New Zealand should a person need to show compliance with before they can receive an Exporter Statement?

NZIF is not in a position to answer this.

What requirements set by overseas markets should a person need to show compliance with before they can receive an Exporter Statement?

- Requirement from which countries?
- What requirements?

NZIF is not in a position to answer this.

Who should be responsible for meeting export requirements?

NZIF assume that it would be normal practice that any exporter would be responsible to meeting the export requirements relevant to their product.

Do you think there is any other information needed to support access to overseas markets?

- Yes
- No
- Not sure

For each overseas market, what further information do you think is required to ensure market access?

Please provide reason/s for your answer:

NZIF is not in a position to answer this.

Should there be any exemptions from export requirements?

- Yes
- No
- Not sure



Please provide reason/s for your answer.

NZIF is not in a position to answer this question. It needs to be informed by direct consultation with exporters across all levels of the sector.

Concluding Comment

NZIF would like to thank you for the opportunity to submit on this consultation. We would welcome any opportunity to provide further clarification in relation to the points we have made in the body of this submission.

If you have any queries, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Treadwell'.

James Treadwell (Fellow and RMNZIF)
President
NZ Institute of Forestry
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Appendix 1

Response to the Amendment Bill

General comment and context

- 6) As a professional organisation representing forestry interests in many forms, NZIF is
- Concerned about the illegal trade in wood, the social, environmental and economic harm that trade represents and any harm that might arise from such trade the New Zealand might be involved in.
 - Believes it is a natural fit therefore, that NZIF would support the general thrust of any legislation designed to suppress or eliminate illegal activity within the trade of logs and timber products.
 - Notes the caveat to these positions, that is that in the context of the New Zealand situation almost all outward trade arises from plantation forests that are legally established, planted for timber production. These forests and their harvesting are subject to a range of controls under various pieces of legislation, thus risks of illegal wood entering supply chains in any quantity let alone a persistent quantity, is very low.
 - Urges that in giving effect to this Bill, NZIF believe it to be important that all efforts are made to keep the systems and processes involved in legal wood verification as simple and costless as possible.
 - While costs of imported wood products may increase slightly for importers and /or consumers, NZIF do support legality verification for imported products, noting that in many cases the use of Certification chains of custody (FSC and PEFC) adequately serve that function.
- 7) The primary concern NZIF have in respect of this Bill is that it merely expresses the framework mechanism by which the law is given effect. All detail is to be drafted under Regulation. On this basis it is very difficult to ascertain whether the resulting enforceable law will be impractical, onerous and expensive or appropriate and cost effective for the risks at play.
- NZIF note that in a number of places the Bill refers to the need for further consultation with the most likely affected parties before Regulation are drafted. NZIF applauds that requirement, noting that it needs to be early, effective and transparent.

Further details

- 8) Clause 77. NZIF note that in sub-clause (c) it is not clear in the domestic scene, the extent to which “the harvest laws of the country of harvest” might be covered. In our view it is important that the extent of reach is constrained very much within the realm of sub-clause (a) the right to harvest and the right to access the land where the harvest is to occur (including operational preparations to enable that harvest). It is these factors that determine if the sourcing of the wood was legal. Other laws e.g RMA might be transgressed in the task of removing trees from a forest however the “legality” relates to the actions or inactions of individuals or entities, not to the “availability” of the trees for harvest. This principle distinction is important.
- 9) The definition of “harvest law” encompassing “(a) affect how or whether a harvest is carried out” in conjunction with “(b) (iii) any other matter that the Secretary considers relevant” leaves

the door wide open for an expansion of coverage and interpretation of legality. While in terms of incoming trade, such breadth may be required to recognize the controlling laws of other countries; in the domestic scene and for the export of plantation species the powers should be limited.

10) Subpart 1 Clause 80-Legal Harvest information requirements.

With no clarity on exactly what will be deemed required as “legal harvest information” once the regulations have been made, it is not possible to comment on how easy or difficult the supply of such information will be. However, NZIF note:

- a. Sub-clause (c) (i) requires that any error in documentation must, if supply is still in train, be corrected before continuing to supply. This is not necessarily practical in what are continuous supply chain operations. How this clause can be implemented ties in closely with the complexity or otherwise of the information required and the systems developed to manage it. These matters need to be considered together otherwise there is a risk of supply chain disruption arising from very minor or accidental omissions.
- b. NZIF are unclear as to the meaning of sub-clause (c) (ii) requiring that the corrected information be supplied as soon as practicable if all the timber product has already been supplied “until trade between the person and the recipient is completed for that harvest”.

11) Clause 81 Threshold levels

- a. In setting by regulation a threshold below which a participant does not need to provide legal harvest information, the impact of the proposal on smaller participants in the industry cannot be judged. NZIF would note that the smaller the scale and intermittency of the participant, the more risk of accidental infraction (without an education rollout) and difficulty in understanding relevancy of the threshold (e.g to a shelterbelt, a small wood lot etc).

12) Clause 82 Requirements for a legal harvest statement

NZIF are unclear as to what level of consensus, if any, has arisen from consultation over the requirements for “A legal harvest statement”. It is noted that Sub-clause 82(1)(c) it must include the information required by the regulations and (d) must be in a form approved by the Secretary.

- a. NZIF seek that it be recognized that due to the scale of transactions involved in forest trade, it is inevitable that most participants will have to place reliance of information technology to manage much of the process through their supply chains. This will require that:
 - The requirements are clear, as simple as possible and well notified.
 - Protected from regular unnecessary change.
 - Provision is made for adjustment and compliance of systems if change is made by the Secretary.

Disciplines against ill-considered or unjustified change appear lacking.

- b. Given that any harvest of indigenous logs is already subject to tight regulation via Part 111(a) of the Forest Act, NZIF support the concept, that such harvest should be excluded from the provisions covering exotic plantations.

13) Subpart 2 Clause 85 Registration Criteria for Legal Harvest.

NZIF note that many parties for whom registration for Legal Harvest will be required will by default of the Forest advisors and Log Traders legislation already be being registered for that purpose. In this Section and also Part 6 Clause 175 relevant to log traders, this Bill and the Advisors and Log Traders legislation should be “talking to each” such that the registration as an advisor or log trader automatically fulfills all the criteria required for legal harvest less the assessment and verification of the “due diligence system”.

14) Subpart 3 Clause 87 Obligations of registered persons.

NZIF note again the importance of timely clarification of requirements, for the due diligence system and reporting requirements given these will be defined by way of regulations.

- a. We note the supply chain risks associated with lack of clarity in requirements or delays in the specification of requirements or templates by the Secretary (Subpart 4 clause 90) and also the availability of “Assessors” (104-105) of the due diligence system given the large immediate demand for those services that will arise at some specified point. As proposed the requirements might run smoothly as part of business as usual once established but significant disruption can be envisaged if the roll-out is inadequate.
- b. Sub-clause 87(1)(e) refers to a potential for “practice standards for legal harvest”. This in NZIF’s view, raises a concern provision potentially giving far too much room for ad-hoc additions of new provisions and requirements by regulation and potentially opening doors for ministry or ministerial interventions.

15) Subpart 3 clause 89

While obvious that there will need to be some form of verification that the legislation is being followed, NZIF note the apparent bifurcation of process with a registered person having to verify annually and potentially at other times to information formats not currently known while at the same time the due diligence system is also having to be assessed and verified to start and then subsequently “104(2)(a) at regular intervals based on a level of risk”. NZIF suggest there are grounds to look at this and streamline the proposed process of verification.

16) Subpart 3 clause 92

NZIF Note and support the functionality delivered by this clause enabling branches and divisions to be registered separately from a parent entity. Given the parent entity also has to be registered, could a scenario where the parent (centralized administrative office) did not actually rise above the threshold criteria for registration?

17) Subpart 5 clause 97

NZIF note that clause 97 appears to require (“the Secretary must revoke...”) that a person whose registration has been suspended must have that registration revoked once a suspension right of review is exhausted, or at the individual’s request. This does not seem to provide for a situation where failings, whatever they may be have, during suspension, been corrected and confirmed compliant! This could be grossly excessive in some circumstances.

18) Subpart 6 Due Diligence systems.

- a. We refer to our earlier comment (point 9) concerning the current lack of clarity as to requirements for meeting the definitions of legal harvest and the requirements and format for due diligence systems and templates.

19) Subpart 6 Clause 101.

The provision for recognition of certification schemes is entirely appropriate given that wood legality has been a founding principle of the two main schemes since their inception. FSC 'Controlled Wood' is also similarly founded. Nevertheless, NZIF draw attention to the fact that while large operators in NZ are certified:

- a. A scenario could arise where a certified entity loses or has certification temporarily suspended for failing to meet a criterion or indicator that has nothing to do with the criteria related to wood legality.
- b. An entity may operate in both certified and non-certified estates.

In either case above operators may feel obliged to run both their certification requirements and those required for a registered legal harvest recognition. This amounts to duplication, more cost and more complex information systems management. It behooves those defining the detail of the regulations for this Bill to streamline and synchronize the requirements as closely as possible ensuring the different pathways reinforce rather than complicate each other.

20) Subpart 8 Assessors and recognized agencies.

It is accepted that the purpose of these provisions will be to enable the Regulator to contract out the services required to undertake due diligence. While there is no detail available to grasp the level of work content required of an assessor and hence likely costs, NZIF believe that the regulator must have put upon them an obligation to ensure that there are sufficient numbers in the market to ensure competitive pricing along with timely service. Given the obligations will impose an additive cost to forest owners, simplicity, low cost and interoperative synergy with Certification systems is required.

21) Subpart 9 Registers

The purpose for this is acknowledged. NZIF believe there is an opportunity to ensure integration of any such registers with those of registered forest advisers and Log traders.

22) Subpart 13 Clause 160 Requirements before making regulations

NZIF strongly support subclauses (1) (a) and (c) that the regulations are actually necessary to achieve the purpose of the proposed legislation and that "...there has been appropriate consultation with affected persons or representatives of persons substantially affected including tangata whenua and forest industry bodies". NZIF remain concerned by use of regulation to create the law subservient to the Act, there is a potential for ballooning bureaucracy, cost and complexity without proper scrutiny.

Conclusion:

NZIF naturally support mechanisms including legislation that will support the elimination of illegal wood trade and concurrently strengthen the reputation of New Zealand's forestry sector.

We are concerned however that in the context of New Zealand's plantation exotics and the legislative methodology being applied by as yet undisclosed detailed regulation, there is a significant risk of adding complexity and cost not justified by the risk. We also have some concerns that some aspects in the regulatory structure could provide too many openings for unjustified departmental or ministerial intervention.

If you have any queries, please contact the undersigned.

Yours sincerely,



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