



FOA Submission

on

Forests (Legal Harvest Assurance) Amendment Bill

3 August 2022

To: The Primary Production Select Committee

From: Forest Owners Association

FOA

The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial scale plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand's plantation forests and over 75% of the annual harvest. A number of our members are active in the woodlot harvest area, using these resources to add to their harvest offerings both domestically and overseas. Some members are also active in providing management and/or marketing services.

FOA Submission:

1) Intent

FOA agrees with the intent of the Bill to assist in preventing the global trade in illegally harvested timber imports while also ensuring New Zealand's own timber products are sourced from logs that have been legally harvested.

New Zealand has a very effective legal system, environmental and health and safety legislation. These systems are applied evenly and without bias to all levels of the industry.

Any Legal Harvest Assurance system should acknowledge the strong existing assurance systems already in place in New Zealand. Given this framework this bill can and should be designed to achieve its purpose through a lighter legislative structure than would otherwise be required.

The Bill as presented is overly bureaucratic. It looks to be setting up a very costly infrastructure which is unnecessary to meet the intent of the Bill. This and the associated cost expected to be met through user pays, are opposed.

2) Scope of proposed legal harvest system

The Act notes: *"The legal harvest system will apply to exotic timber and specified timber products.*

With two exceptions, the legal harvest system will not apply to a person trading in indigenous timber as they are already regulated under Part 3A of the Forests Act 1949 (the Act)."

The Act applies to: "indigenous species of New Zealand logs, but only of a kind specified in regulations". It is unclear what "of a kind specified in regulations" refers to.

Part 3A of the Forests Act 1949 does not apply to planted indigenous species, therefore the scope of the legal harvest system may need to be amended to include "planted indigenous species".

3) Legally harvested

New section 77 provides that timber is legally harvested if the person who harvests the trees or woody plants from which the timber is derived—

- has the right to harvest them (including a right to access the land where the harvest occurs);*
- and*
- has all necessary legal authority to exercise that right; and*
- does not contravene the harvest laws of the place or country of harvest when carrying out the harvest.*

FOA agrees that the first two points are appropriate for defining timber is legally harvested, however point three will be impracticable to implement.

“..does not contravene the harvest laws of the place or country of harvest when carrying out the harvest.”

Proof of contravention of harvest laws will usually require going through existing legal avenues which takes time. The associated logs are likely to be sold and or processed, possibly in a different country. Logs are biological, and deteriorate over time. This can be very quick (a matter of days for appearance grade logs in summer) therefore it is unfeasible to retain logs until any issues have made their way through the legal system.

Have to question the practicality of a system that looks at actions from 1-2yrs previous. If actions were illegal the courts will determine the penalty under existing legislation. Being subsequently penalised under this Bill for actions undertaken years previous and already the subject of legal action, which do not necessarily have any relationship to current activities is not fair – an extended liability.

New Zealand has appropriate laws in place that cover environmental and health and safety issues. The Legal Harvest Assurance Scheme is not equipped to address these issues. It is an immediate point in time instrument, whereas proof of contravention of harvest laws may take years.

FOA received the following advice from MPI regarding contravention of harvest laws.

“Once the breach has been confirmed by a court finding, the forest owner would need to update the legal harvest statement if the breach is of a legal requirement in a “relevant law” which means the timber has not been “legally harvested”. This is because “legally harvested” goes further than property ownership, it is also about land and resource use. This update, however, would not affect the timber that is already in the supply chain.”

We agree any update should not affect the timber that is already in the supply chain.

Therefore it only applies to timber yet to be harvested. It is very likely the conditions that led to the court case have been addressed. This is the purpose of the existing legal system. The legal harvest statement should only need to be updated to reflect the current system – which is likely now compliant with NZ law.

4) Log Traders – Definition

A log trader is defined in new section 174 as—

- a person who, in trade,—*
- buys New Zealand logs, whether after harvest or in the form of trees to be harvested at an agreed time, and whether or not the person intends to on-sell the logs; or*
- exports New Zealand logs; or*
- processes New Zealand logs that the person has grown themselves;*
- a person who does any of the things specified above as the agent for another person:*
- a company that, in trade, transfers the ownership of New Zealand logs to or from a related company, whether the transfer relates to logs after harvest or in the form of trees to be harvested at an agreed time.*

Requiring a person or company who processes logs that they have grown themselves, or a company that transfers ownership between related companies, does not contribute to meeting the intent of the Act. Processing your own logs, or transferring ownership between related companies is very low risk regarding log legality and should not require registration by any party as a Log Trader. It is effectively seeking to provide protection where it is not needed. This is an example of unrequired “bureaucratic complexity” – referred to later in our submission.

5) **Due Diligence System**

As part of the proposed legal harvest system, timber importers, exporters, log traders and primary processors will be required to register and establish due diligence systems to demonstrate that the timber they have obtained has been legally harvested.

FOA notes, that to keep costs and bureaucracy low it is essential the due diligence system while fit for purpose, is easy to use and maintain.

Section 99 – Due diligence template.

We agree with this section. A template of an appropriate “due diligence system” meeting minimum requirements (light touch to the regulations) should be developed that companies can adopt if they wish.

Section 98 (2) a and b

Prohibits dealing in timber that is not legally harvested.

A process is required to manage timber that has been identified as “illegally harvested”. It should not be left to rot. There needs to be a channel to use this timber. Proceeds could potentially be used to offset the systems costs.

Section 98 (3).

The due diligence system must comply with -

(a) any requirements set by regulations.

This could be anything. Impossible to submit on something that is unknown.

6) **Legal Harvest Statement**

Section 82 (1)

(c) must include the information that is required by regulations

(d) must be made in the form approved by the secretary.

As noted above, this could be anything. Impossible to submit on something that is unknown.

7) **Recognised Certification Schemes**

Section 101

The Secretary may recognise a certification scheme ...

Third party certification schemes such as FSC / PEFC require independent assessment. This assessment should be recognised, removing the requirement for further assessment as specified in sections 103 – 106.

8) Assessment of Due Diligence System

Sections 103-106, Sub part 8

There should be an appeal process to challenge an unfavourable assessment.

9) Commencement of Bill

The Bill will come into force on the earlier of 3 years after Royal assent and a date appointed by the Governor-General by Order in Council. However, the new compliance and enforcement provisions in Part 5 (legal harvest assurance) will come into force 12 months after the rest of the Bill (unless brought into force earlier by Order in Council). This staged approach is to enable the development of enabling regulations and associated rules, the education of regulated parties in this new system, the timely registration of regulated parties, and adequate time to liaise with New Zealand's trading partners.

FOA agrees with this staged approach to implementation.

10) Power to make regulations

Section 161

This section means it is impossible to know the reach of this Bill, cost, etc.

Throughout the Bill, there are numerous references to: "any requirements set by regulations", "include any information required by regulations" or "the secretary may make" .

It is reasonable to expect that the scope of the regulations and the power of the secretary are defined rather than being left open ended.

It is impossible to submit where critical details are not known.

10) Regulations may set fees and charges

Section 162

The Bill as presented is overly bureaucratic. It looks to be setting up a very costly infrastructure which is unnecessary to meet the intent of the Bill nor the needs of the users of the system. On current unwarranted complexity and cost, FOA is opposed to this being a user pays system.

11) Regulations may impose levies

Section 164

We are opposed to the option of funding the services imposed by this Bill via a levy.

As noted, we consider the Bill as presented is overly bureaucratic and complex – therefore costly to manage. It looks to be setting up a very costly infrastructure which is unnecessary to meet the intent of the Bill, therefore it would be inappropriate to expect this to be a user pays system.

.

For further information please contact:

A handwritten signature in blue ink, appearing to read 'Glen Mackie', with a long, sweeping flourish extending upwards and to the right.

Glen Mackie
Technical Manager
NZ Forest Owners Association

027 445 0116

Glen.mackie@nzfoa.org.nz