FOREST OWNERS ASSOCIATION

Submission

Legal Harvest Assurance - Issues Paper Two

Submission to:
Ministry of Primary Industries

28 August 2024

Growing Your Future

Contents

Submitter

The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial 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 70% of the annual harvest.

Over 30% of New Zealand's fibre supply is sourced from farm woodlots and this number is predicted to increase. Many of these entities will not have third party certification, though some of them will supply to third parties that are part of accredited certification schemes such as FSC and PEFC.

In 2023, the forest growing sector was worth $6.6 billion in export value and has a 12% share of rural land use. It contributes 1.6% of New Zealand's GDP and employs between 35,000 and 40,000 people in wood production, processing, and the commercial sector.

Executive Summary

The New Zealand Legal Harvest Assurance System Issues Paper One ("Issues Paper #1") sought feedback on feedback on assumptions that can be made to assist with designing the details of how the legal harvest assurance system will work in practice.

Building on Issues Paper #1, The New Zealand Legal Harvest Assurance System Issues Paper Two ("Issues Paper #2") now seeks further views on the design of the legal harvest assurance system and its practical operation.

NZFOA reiterates the serious concerns raised in its feedback to Issues Paper #1, particularly regarding the definition of "harvest laws of a place or country" and the intersection with New Zealand's environment laws. We stress that the system is likely to be more burdensome than the existing RMA provisions, as it subjects a person or entity's non-compliance with procedural systems - not just standards - to criminal penalties.[1]

The following key principles must be at the forefront of the design of a due diligence system:

a. The implications of failure to comply with due diligence systems that assert compliance with the laws of New Zealand;
b. The risk associated with each part of the supply chain (Import, export and processing risks need to be separately assessed and managed);
c. The need to ensure that the system is proportionate to the risk of each part of the system;
d. The need for a cost-effective system so that it does not unnecessarily distort the supply chain and New Zealand's exports. The system cannot cost more than the profit from the logs / timber produced;

[1] in addition to compliance notices, warning notices, and infringement notices.

e. An understanding that existing chain of custody and docket systems are likely to provide part of the solution in terms of the information / traceability requirements necessary for the system;
f. An acknowledgement that third party certification schemes have a role to play in a due diligence system and that their engagement must be viewed as evidence of low-risk activities, and as providing a response to the mitigation of risk.

Building on these principles, primary areas of contention are:

a. There is a need to recognise that not all foresters are part of accredited third-party certification systems such as the Forest Stewardship Council (FSC) or Programme for the Endorsement on Forest Certification (PEFC) certification schemes;
b. There is a need to develop systems for those foresters that are not part of those schemes and that are not overly onerous or cost prohibitive so as to disincentivise harvest;
c. It is premature to address the details of assessor systems until the due diligence system is designed and we understand its complexity.

Overall, the proposed legal harvest assurance framework is a significant new compliance regime for the forest industry that will result in increased costs and obligations. While the framework is an attempt to strengthen New Zealand's international reputation and safeguard and enhance market access for the forestry sector, its goals will be thwarted for parts of the sector if they choose not to harvest in response. Ironically, this may benefit international exporters of wood products to New Zealand.

For other parts of the industry, onerous compliance obligations will simply raise costs, reduce profits and deter investment. This needs to be avoided wherever possible.

At the outset we observe that our feedback is limited to the harvest side of the supply chain.
It is therefore vital that there is further direct engagement with the industry as a whole through joint workshops. There is much detail to work through in terms of understanding the practical operation of this system including how existing traceability systems may be translated into the due diligence system, how the industry connects each part of the system and how to create as simple a system as possible.

Proportionate Risk Response

Paper #2 attempts to ask questions relating to legal assurance as it applies to a range of entities dealing with timber or logs in New Zealand. This includes:

- dealing in any timber that results from the harvest of regulated timber; and is not legally harvested;
- importing or exporting any specified timber products that are, or include timber that is, not legally harvested.

As this covers an extensive range of risks across the sector, we consider it important to clearly differentiate between types of trade in timber and logs. Significantly, we understand that there is a much greater risk that imported timber may be illegally harvested than exported timber. The larger risk associated with the harvest of exotic timber in NZ is the potential loss of market share. In many cases the industry has directly addressed this issue itself, through membership of certification schemes such as FSC and PEFC.

Australia approaches the importation of illegally logged timber and the processing of illegally logged timber through a detailed and regulatory complex set of requirements.[2] It does not apply the same approach to domestically grown timber, which is managed through the Export Control Act 2020. This legislation is not specific to timber so applies a generally consistent approach to exports.

This suggests that it is also appropriate for NZ to adopt a segregated approach to management of these discrete areas of trade. At this stage, the papers have conflated the importation, processing and exportation of exotic timbers, which leads to inappropriate assumptions underpinning the development of the scheme and difficulty in responding clearly to the questions posed.

We acknowledge that from a forestry perspective we are not well placed to comment on the appropriateness of due diligence regulation for other parts of the sector. Instead, we urge a focus on risk and suggest that there is a need for a workshopping with the wider sector. Before further consultation takes place, we strongly recommend that proposals for importation, processing and exportation are separated. Without separation, there is a real prospect that regulations for imported timber and processing are deficient, while regulations for exporting timber are excessive, or that neither response is proportionate to the real risk.

As detailed in the NZFOA's response to the initial legal harvest assurance paper, we remain significantly concerned about how "compliance with the laws of New Zealand" will be interpreted. Specifically, we worry that the strict liability provisions and penalties outlined in the Forests (Legal Harvest Assurance) Amendment Act 2023 ("Act") may impose substantial compliance costs on foresters that are not commensurate with the risk. These concerns include penalties for failing to keep due diligence systems current, not having systems in place, and not adhering to established due diligence procedures. Essentially, the Act introduces a secondary layer of scrutiny for environmental non-compliance.

This system could be more burdensome than the existing RMA provisions, as it subjects non-compliance with procedural systems - not just standards - to criminal penalties, in addition to compliance notices, warning notices, and infringement notices.

Given that our comments are limited by the current regulatory framework, our primary concern is to ensure that the due diligence system is as simple as possible. Bearing in mind that non-compliance could result in legal action, criminal convictions, and substantial fines, a simple approach is essential.

Due Diligence System Requirements

The "what we are trying to achieve" statement (7.2) refers to the minimising disruption to trade by giving registered people the flexibility to determine the most cost-effective means for minimising risk and verifying the legality of harvest for their specific business. This also refers to the "design of a risk management system proportionate to the risks that timber may be illegally sourced."

"Due diligence" or "due diligence system" are not terms defined in the Act. However, the purpose of assessment of a due diligence system is to assess the extent to which the system complies with the

[2] The Illegal Logging Prohibition Act 2012 prohibits the importation of **illegally** logged **timber** and the processing of **illegally** logged raw **logs**

requirements of s99.[3] Section 99 provides that the system must effectively eliminate or mininise the risk of dealing in or importing or exporting any timber that is not legally harvested.

In other words, the purpose of a due diligence is to establish legal compliance. Typically, due diligence systems are made up of three parts: information, risk assessment and risk management.

The purpose of the due diligence process and the associated risk of non-compliance are central to any decisions about the extent of due diligence requirements. Without indicating the 'purpose' in the assumptions there is a risk that this will be lost in the discussion about the technical aspects of the system. The system need only respond to the issue.

We strongly agree with the need for a cost-effective system and proportionate response. To put it simply, the system cannot cost more than the profit from the logs / timber produced.

We understand that traceability or chain of custody of logs is a foundational requirement of establishing the "information aspect" of a due diligence system. For exotic timber exporters existing systems already exist to address traceability throughout the supply chain.

After harvest, timber is either transported directly to the Port for export or to a Mill for processing. Once it reaches the Mill timber is either processed and shipped to Port or chipped and processed within the Mill.

All timber that leaves a forest is subject to a paper based or electronic docket system. The docket system allows for traceability through the supply chain from the forest to the Mill / Port. The system records the name of the forest, the contractor, the species, the forest compartment number and whether the timber is subject to the FSC or PEFC certification scheme. It would be relatively straightforward to include the GIS location.

FSC and PEFC certification schemes provide evidence of compliance with the law. We support incorporating the FSC or PEFC schemes into a due diligence system. The membership of these schemes signifies that a product comes from environmentally, socially, and economically responsible sources and these schemes are internationally recognised and accepted. They establish that timber has a chain of custody and is legally sourced. In other jurisdictions due diligence systems classify products that are subject to these certification schemes as low risk and therefore subject to less onerous information and other requirements. We support this approach.

It is appropriate that these schemes are endorsed by the Secretary as appropriate methods for ensuring compliance with New Zealand laws, subject to the understanding that these schemes should only be used to prevent duplication for companies that opt into them, rather than being viewed as the definitive approach to establishing compliance.

Evidence of compliance for non FSC or PEFC members

As not all forest owners are members of FSC or PEFC, we acknowledge that there is a need to consider the due diligence obligations that should be applied to these exporters. We understand that the absence of participation in a scheme means that assessment of the risk of non-compliance with the law, and risk mitigation is more complicated.

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[3] S103

Currently, for export purposes to some countries, such as Korea, a declaration information statement is signed by MPI which is valid for one year. This statement provides as follows:

Harvesting of planted forests in New Zealand as subject to the Resource Management Act 1991 which provides for these sustainable management of New Zealand's natural and physical resources. [x] Ltd must comply with the Resource Management Act 1991, which includes provisions for monitoring and auditing compliance, and the enforcement (including prosecution) for non-compliance with the law when required. Demonstration of the legality of harvesting from planted forests in New Zealand is achieved through compliance with the Resource Management Act 1991. This information statement applies to New Zealand sourced wood products only.

We understand a corroborating statement from the exporter to this effect is supplied to MPI. The issue of exporter statements is addressed in s108 to 113 of the Act. Reliance on this approach may be appropriate for smaller woodlot owners. As noted, in light of the criminal sanctions set out in the Act, any system applied to non-certified (typically smaller) operators must be cost-effective and readily capable of compliance so that the costs and risks of compliance do not adversely impact on decisions to harvest. As noted, the system cannot cost more than the profit from the logs / timber produced;

We observe that any fraud in relation to such statements may be the subject of enforcement action or conviction. As such, the potential for someone to commit fraud should not preclude the use of such statements.

Due diligence system information / records

In view of the low risks acknowledged for the export of exotic timber we consider that a due diligence system should require forest owners / managers to keep as few records as possible. This would include :

- Evidence of proof of ownership of the logs
- Evidence of where, when and what timber was harvested (in accordance with the requirements for the legal harvest statement in s82)
- Evidence of the chain of custody (through the existing docket system)
- Evidence of a risk assessment process (which may be affiliation with a certified scheme)
- Evidence of measures taken to mitigate risk (which would include affiliation with a certified scheme)
- Provision of a declaration form testifying to compliance with New Zealand's laws (i.e a statement of compliance), provided to the Minister.

This information is consistent with the indications about the sort and extent of information that may be required in s99(5) of the Act.

As acknowledged, there is greater complexity to a system where a supplier is not part of a third-party certification scheme. The appropriate risk assessment and risk management aspects of the due diligence system require further consideration and consultation with the industry.

We also cannot speak on behalf of other entities in the supply chain, such as mill owners and ports, as to what they consider appropriate. In our opinion, the issue, particularly the risk assessment

aspect of the due diligence system, requires thorough discussion with all parties in the supply chain to ensure the system is practical and workable for everyone.

Monitoring / Assessment

Continuing certification as part of a third-party certification scheme should be able to be relied on in place of monitoring and assessment of due diligence, given the rigour of the schemes and the identified risks. It is reasonable and commensurate with the risks, and robustness of those schemes that proof of certification operates as an appropriate surrogate for monitoring by a third-party assessor. We suggest that operation under an approved third-party certification scheme is deemed to be evidence of compliance with the due diligence system.

We note that the third-party schemes provide that failure to comply results in significant improvement processes or corrective action requests that are subsequently audited until compliance is achieved. Both systems have a system of escalation if Corrective Action Requests are not resolved within a given time frame, ultimately resulting in loss of certification if compliance is not achieved. There is a significant incentive to avoid corrective action requests and ensure those that are issued are resolved in a timely manner to avoid the potential for loss of certification.

For entities that do not rely on third-party certification schemes, evidence of chain of custody and legal ownership are matters that may need to be monitored or assessed. These are matters that will be subject to the enforcement powers set out in sections 142 to 145 of the Act.

However, we would strongly caution against any complexity of such processes or the development of another new "assessor" industry.

Registered persons

To be registered for legal harvest the person must be fit and proper (s85). There is no definition of fit and proper. In determining whether a person is fit and proper the Secretary must take into account the matters set out in regulations and any other matters that the Secretary considers relevant.[4] (s85)

Note that in general terms, a fit and proper person is a person who is someone of good character, who abides by the laws of New Zealand and elsewhere, and is likely to continue to do so while being the holder of an authorisation.[5]

Other systems

Other New Zealand statutes have requirements for fit and proper persons to be registered.
The extent of those requirements is dependent on the risk of the activity and vulnerability of those exposed to the licenced person or organisation. For example:

1. WorkSafe New Zealand has statutory powers under the Health and Safety at Work Act 2015 to grant certain authorisations to persons who are fit and proper.[6]

[4] S85(2)
[5] Refer Fit and Proper Test Technical Guide December 2017 – Worksafe NZ
[6] refer to part 5, sub-part 2 of the Act

2. Those engaged in financial transactions have fit and proper standards, as do lawyers pursuant to the Lawyers and Conveyancers Act.

3. NZTA requires commercial drivers to meet fit and proper criteria. These relate to good standards of behaviour and the demonstration of good safety practices. The fit and proper person check includes:

    - transport-related offences – especially safety
    - serious behaviour problems
    - past complaints about their work in a transport service
    - not paying fines for transport-related offences
    - criminal offending in New Zealand or overseas, including charges and convictions for violence or sexual offences, drugs or firearms offences, or organised criminal activities.

The common aspect of the above legislation is the direct risk to consumers or a person's health and safety. Accordingly, the fit and proper tests are stringent.

More recently entities who make organic claims and the businesses that make organic products have been required to satisfy they are fit and proper persons.[7] Although regulations setting out these requirements are yet to be introduced, our expectation is that these requirements would also be more stringent than the tests to be applied under the Forests (Legal Harvest Assurance) Amendment Act in light of the vulnerability of consumers.

When considering what is required to establish who is fit and proper for the purpose of the Act, we reiterate that Issues Paper #1 refers to the adoption of a system to regulate people trading in the identified products that are at highest risk of losing market access and/or being illegally sourced and that it seeks to ensure the regulation is proportionate to the risk of losing market access and/or timber being illegally sourced.

Based on the assumption that for exotic timber species exporters the greater threat is loss of market access rather than a risk that exotic species are being illegally sourced, we consider that the key to determining what amounts to "fit and proper" for exporters of exotic species is establishing how market access would be lost.

In developing a fit and proper test, our assessment is that market access is most likely to be lost by an exporter who has failed to comply with the RMA, or where there is evidence of a lack of financial acumen associated with bankruptcy or liquidation.

We conclude that it would be appropriate to test whether a party is "fit and proper" to trade timber by reference to:

a. Convictions under the RMA. We do not consider that it is appropriate to require certification to be based on matters under investigation under the RMA though this could be a matter to be disclosed to MPI.[8]
b. Bankruptcy (for individuals)

[7] Organic Products and Production Act 2023.
[8] This is currently the case for export certificates.

c. Liquidation (for companies)

These are the matters currently required by the MPI Exporter Information Statement and we consider that they remain appropriate to the risks for exporters for the purposes of establishing whether a person is "fit and proper".

The approach should avoid using a heavy-handed solution to a low-risk problem, with associated high compliance costs and intangible benefits.

The following sections outline the specific responses to questions posed by the paper. Where NZFOA has no comment, the question has been deleted.

Responses to questions set out in the Issues Paper #2

3. Legal Harvest Information

Questions:

- **Do you agree with these assumptions? Why or why not?**
  The Paper makes the following assumptions about legal harvest information:
  - legal harvest information will be successfully passed along the supply chain;
  - registered people may require suppliers to provide legal harvest information through commercial arrangements; and
  - the information provided in a legal harvest statement will be sufficient to satisfy the due diligence system of the registered person receiving the information.

  We agree with the assumptions about legal harvest information as far as they go. A key point to establish is what information is necessary, with reference to the purpose for that information. This is discussed above.
- **Are there any other assumptions you think we can make?**
  We consider it appropriate to assume that approved certification schemes provide the necessary information.
- **How should timber be identified in a legal harvest statement?**
  See above
- **What other information should be required in a legal harvest statement?**
  See above
- **Is there any other evidence you think should be required as legal harvest information?**
  See above
- **If yes, what other evidence do you think should be required as legal harvest information?**
  See above

- **What legal harvest information do you think should apply to indigenous species of New Zealand timber?**
  As noted in Issues Paper #1, we query why there are less obligations for the harvest of indigenous timber than the harvest of exotic timber.

- **What information do you think should be required about specified timber products?**
  See above – however, we do not understand exotic timber to be a specified timber product.

4. Obligations and exemptions for people responsible for harvest

Questions:

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

  The Issues Paper #2 identifies the following assumptions about obligations and exemptions for people responsible for harvest:

  - People responsible for harvest will have all the necessary legal harvest information that is required, and pass this along the supply chain;
  - Supplying timber in some circumstances and in small amounts will not pose a risk to market access;
  - Exemptions and exceptions should only apply if the information is not needed for the recipient to comply with their due diligence system.

  We cannot comment on the second point and are not clear as to the meaning of the third point. We agree with the first assumption.

  We are also unclear about the statement that MPI is trying to "only regulate people trading in types of regulated timber and at levels that are at highest risk of losing market access and / or being illegally sourced.

  These two points are distinct. Based on feedback, we think careful consideration should be given to these issues independently. For example, risk of loss of market access is an issue for exotic and native timber, while illegal sourcing of timber is likely to be an issue more specific to native timber and imported timber.

- **Are there any other assumptions you think we can make?**

  See above

- **What records should be kept?**

  See above comments about the existing docket system.

- **How long should they be kept for?**

  This detail requires further discussion.

- **How should records be stored?**

  This requires further discussion.

- **Should there be a threshold that needs to be met before a person responsible for harvest needs to provide legal harvest information?**

We addressed the question of thresholds in our response to Issues Paper #1.

- **If you think there should be, what should the threshold be for a responsible person to have to comply with legal harvest information requirements?**

  We addressed the question of thresholds in our response to Issues Paper #1.

- **What measure should be used to set the thresholds?**

  We addressed the question of thresholds in our response to Issues Paper #1, noting that for harvesting timber in New Zealand, we suggest to either set a threshold of 1 hectare or 600 tons every calendar year. The measures are chosen for reasons of simplicity.

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

  We addressed the question of thresholds in our response to Issues Paper #1 noting "No. It depends on the risk involved, and that may vary depending on the activity/good, or the ability to even verify compliance."

- **If you are a person responsible for harvest, what information do you already collect about the regulated timber you supply e.g., volume, value, number of units, or other measurements? Do you provide this information to anyone? If yes, who do you provide it to and how often?**

  See above information regarding the docket system and chain of custody. We note that the docket system does not capture value as this is private commercial information.

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

  We addressed the question of thresholds in our response to Issues Paper #1 noting that "for a simple threshold such as we are proposing, we suggest that an initial review after 3 years would be adequate."

5. Registered persons

Questions:

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

  The assumptions are:
  - Businesses that apply to register will have all the necessary information about the business, the legal harvest activities they carry out, and their due diligence systems to complete an application for registration.
  - Businesses required to register for legal harvest assurance will be able to amend the systems they already have in place for limiting their risk of trading in timber that has been illegally harvested to meet due diligence requirements.
  - "Parent" businesses will only register branches or divisions separately where it makes commercial sense to do so and understand that they are ultimately responsible for any liability or consequences if a branch or division fails to comply with its registration obligations.

  We generally agree with these assumptions subject to comments below.

- **Are there any other assumptions you think we can make?**
    - That the risk of illegally exporting exotic timber is low.
    - That the greater risk for the export of exotic timber is loss of market access.
    - That a person is fit and proper until proven otherwise. This is particularly important in the context of prosecutions. The presumption of innocence until proven guilty must apply.
- **What matters should be taken into account to determine if an applicant is fit and proper to be registered for legal harvest?**
    - Where a person or entity has a criminal conviction entered against them this may be a matter for consideration but equally should not be regarded as conclusive evidence that a person is improper or unfit for registration.
- **If the applicant is an entity, the conduct of who in the entity is relevant to determine if the applicant is fit and proper? What should we consider about these people that work for the entity?**
    - The point of difference between individuals and entities is appropriately addressed by reference to bankruptcy (individuals) or liquidation (companies). See above for further explanation of the proposed approach.
- **What do you think we should consider if the applicant is a branch or division of a 'parent' business?**
    - As a subsidiary company is a separate legal entity it is inappropriate to consider or require disclosure of matters relating to the parent company. The only bearing liquidation of a parent company will have on a subsidiary is that the parent may sell the subsidiary. Otherwise, they operate as distinct legal entities. Where a "branch" arrangement is part of larger entity, the disclosures required of the legal entity will apply.
    - As company structures are at the discretion of each business, we consider that it should be up to companies how they approach registration. As a general principle as statute should not determine or limit the way a company is structured as this will cut across other legislation and remove flexibility.
- **Are there any other criteria you think a person should meet before they are registered for legal harvest? If yes, what should we consider and why?**
    - See narrative above.
- **What information do you think should be provided with an application for registration for legal harvest?**
    - See narrative above.
- **Do you think there should be any restrictions on the conditions that can be put on a person's registration for legal harvest assurance? If yes, what do you think they should be and why?**

- This issue needs to be carefully considered and we recommend further discussion with the forest industry. This addresses the issues raised in our response to Issues Paper #1 where we queried the consequences of non-compliance and how far this would reach, for how long and to what extent.
- We favour a simple system and suggest that any conditions on a registration would relate to matters such as providing evidence on a more regular basis than would be the case if there were no issues.

- **What records do you think a registered person should be required to keep?**
  - S87 requires a registered person to keep records as required by regulations.
  - In our view these should be limited to:
  - Evidence of the due diligence system relied on which will include the information that forms part of that system, such as dockets.
    a. A copy of the compliance declaration;
    b. A copy of any notices provided to the Secretary, for example of a significant change in circumstances.

- **What level of detail should be required in the records and how long should they be kept for?**
  - To ensure that record keeping is not overly onerous, records should be required to be held for as short a period of time as possible to meet the objectives of the scheme.

- **When do you think a registered person should report to MPI? What should they report and how often?**

  As s90 of the Act already requires an annual declaration as to continuing compliance with obligations and s87 requires notification to the secretary of any significant change in circumstances and this is defined in s87(3), we are not sure what further reporting is anticipated.

- **What information do you think a compliance declaration should contain?**
  - For the reasons outlined in the narrative we consider that this information should be limited to:
  - Convictions under the RMA. We do not consider that it is appropriate to require a declaration to reference matters under investigation under the RMA though this could be a matter to be disclosed to MPI for the purpose of determining whether a person is "fit and proper".[9]
  - Bankruptcy (for individuals)
  - Liquidation (for companies)

- **Are there circumstances when a compliance declaration should be made other than the annual declaration? If yes, when should a compliance declaration be made more often and why?**

[9] This is currently the case for export certificates.

- In view of the assumed risks there is no need for more than an annual declaration.

- **Are there any other obligations you think should apply to registered persons?**
  - We reiterate the need to keep the system simple, cost-efficient and workable. The system cannot cost more than the profit from the logs / timber produced.

6. Exemptions from registration requirements for legal harvest assurance

We do not have specific comments at this time on exemptions. We consider that the system should be worked through, as the complexity of the system will have a bearing on the appropriateness of exemptions.

7. Due diligence system requirements

Questions:

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

  The paper makes the following assumptions about due diligence systems for registered people:

  a. Registered people will be able to accurately assess the supply chain risks associated with the legality of the harvest of their timber and/or specified timber products.

  b. Registered people will have information about legality of harvest available for their timber and specified timber products.

  c. The legal harvest statement (in New Zealand) or legal harvest information (from overseas countries where harvest happened for imports) will be passed along the supply chain.

  d. People required to register for legal harvest assurance will already have systems in place for limiting their risk of trading in timber that has been illegally harvested. However, these systems will vary in detail and may be informal or difficult to verify.

  e. People required to register for legal harvest assurance will be able to amend the systems they already have in place for limiting their risk of trading in timber that has been illegally harvested to meet due diligence requirements.

  In response NZFOA notes:

  1. We cannot comment as to import requirements but generally agree with the assumptions for exporters for the reasons outlined above.
  2. In particular, we note that foresters already have chain of custody processes in place. These are not informal or difficult to verify.
  3. Some minor amendments to existing chain of custody processes may be appropriate but these should be limited to matters such as including a GIS location on the docket.
  4. The assumption referred to in section 3.3 that "the information provided in a legal harvest statement will be sufficient to satisfy the due diligence system of the registered person receiving the information" should be also included as an assumption in Section 7. The ability to rely on information from earlier in the supply chain is fundamental to assessing compliance.

5. We strongly agree with the need for a cost-effective system and proportionate response.

- **To what extent do you already have systems in place to limit your risk of trading in timber that has been illegally harvested?**

  See narrative above.

- **Are there any other assumptions you think we can make?**

  We consider that the following additional assumptions are required:
  - As noted in the narrative section, the purpose of the due diligence process and the associated risk of non-compliance are central to any decisions about the extent of due diligence requirements. It should be clear that a due diligence system is a process to establish legal compliance – specifically to eliminate or minimise the risk of trading in illegally harvested timber.
  - It should be assumed that certification schemes may form part of any due diligence systems and that evidence of a scheme establishes that an activity is low risk, and that as a corollary the system addresses the question of what measures need to be taken to address any risks.

- **Should regulations set any requirements for a due diligence system template? Why or why not?**

  Our initial view is that approved certification schemes should form part of a template. However, this issue would benefit from robust industry consultation regarding the details of a scheme.

  In particular any template system needs to carefully consider how it would be applied to those parties who don't have certification.

- **What should MPI consider before approving a template for a due diligence system?**

  We consider it premature to comment on templates for the reasons outlined above.

- **Are there any other things MPI should consider if the template is developed by a third party? If yes, what other things should be considered?**

  See above response.

- **How different to the template do you think a due diligence system can be before it is no longer based on the template?**

  See above response.

- **How long should a template be approved for if it is prepared by a third party?**

  See above response.

- **What conditions do you think are relevant to templates created by third parties?**

  See above response.

- **How often should due diligence system templates be reviewed**

  See above response.

- **Do you currently use a certification scheme for market access?**

See above narrative.

- **Do you think certification schemes should be used in due diligence systems? If yes, how do you think certification schemes should be recognised for due diligence?**

  Yes, see above narrative. These should be recognised under s102 (through the Secretary issuing a notice).

- **What criteria should a certification scheme meet before it is recognised?**

  An internationally accepted scheme utilised by large sectors of the industry would be helpful indicators of the acceptability of a certification scheme. FSC and PEFC are obvious inclusions.

- **Is there anything else MPI should consider before recognising a private certification scheme for due diligence requirements? If yes, what?**

  Many other jurisdictions accept recognised certification schemes such as FSC and PEFC as part of their due diligence requirements. For example, refer to the BWF Template Due Diligence System to meet EUTR obligations.

- **Which certification schemes should be recognised as part of a due diligence system in terms of eliminating or minimising the risk of dealing in timber that is not legally harvested?**

  See above.

- **How often do you think this recognition of certification schemes should be reviewed?**

  FSC and PEFC are internationally recognised schemes that should require irregular review.

- **How often should due diligence systems be assessed based on risk? What should the maximum period be between re-assessments?**

  See above narrative. This matter is something that requires further consideration after consultation with the industry. However, it appears that other jurisdictions may require an annual declaration from a supplier that their certification is current.

- **Are there any other requirements you think should apply to assessing due diligence systems? What should they be?**

  See above.

- **Should the requirements for due diligence systems be different for importers, exporters, and domestic operators? Why or why not?**

  As noted above, we can only comment on the role of forest growers in the supply chain. We consider further pan industry discussion is required. Broadly speaking, a consistent approach is supported.

- **Are there any requirements you think should be specific for importers? If yes, what other requirements should be specific for importers?**

  N/A

- **Are there any requirements you think should be specific for exporters or domestic operators? If yes, what other requirement should be specific for exporters or domestic operators?**

  Refer to the above narrative for requirements.

8. Recognition of assessors and agencies

We do not comment on the majority of this section as we consider that the questions are premature in the absence of understanding the nature and degree of complexity of the system before these decisions are made. Again, we urge that the system is not overly onerous and caution against development of a new assessor industry which will impose significant costs on operators.

Questions:

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

  For the reasons outlined above we consider that the assumptions in this section that private providers are preferable and that MPI should not compete in a competitive market are premature.

- **Are there any other assumptions you think we can make?**

  See above comment.

- **What assumptions can we make about the types of people and organisations that will assess due diligence systems?**

  There are a wide range of operators in the forest industry and all of these need to be carefully considered. We recommend further discussion with the industry.

9. Public registers

Questions:

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

  The paper assumes that:
  - Consumers will find the transparency of the registers increases their trust in the forestry industry.
  - To fulfil their function, the public registers need to show a range of information, including information relating to compliance.
  - The public registers are for providing assurance and should not be used as a marketing tool or allow advertising.

  We do not agree that there needs to be a range of information including information relating to compliance. Only as much information as necessary to (a) meet the purpose of the register as set out in s133(2) and (b) the details set out in s133(3) should be provided on the register.

  Listing a person on the register together with the information required by s133(3) should be prima facie evidence that a person is compliant.

- **Are there any other assumptions you think we can make?**

  It should be assumed that only as much information as necessary to (a) meet the purpose of the register as set out in s133(2) and (b) the details set out in s133(3) is provided on the register.

  Although the Act allows for consideration of "any other matter required by regulations" we consider that the information listed in s133(3) is sufficient to meet the purpose of the register.

  Revocation of registration under s98 (other than a request for removal from the registered person) should be the only basis for removal from the register. Suspension should not be a basis for removal from the register until the process for review has been exhausted and a determination made, as this subverts the common law principle that a person is presumed innocent until proven guilty. We note that the information requirements in s133(3) provide for details relating to any suspension to be listed.

- **What information relating to exporter statements should be included on the public register of persons registered for legal harvest?**

  Where a person holds an exporter statement, s133(3) provides for the regulations to specify any information relating to the exporter statement.

  We do not consider any additional information is necessary.

- **What other information should be displayed on the public register of persons registered for legal harvest?**

  This question is addressed above.

- **Is there any other information you think a registered person should be able to display voluntarily on the public register?**

  No – otherwise it runs the risk that the registration system is utilised as a marketing tool.

- **What other information should be displayed on the public register for recognised assessors and agencies?**

  We refer to our responses to the questions relating to assessors.

- **What information could be voluntarily displayed on the register?**

  We do not consider that there it is appropriate to voluntarily display information on the register for the reasons addressed above.

Closure

We do not object to the submission being made public. We welcome the opportunity for further discussion and engagement.

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