

# Submission

New Zealand's Legal Harvest Assurance  
System

Consultation on operational detail for the  
Legal Harvest Assurance System,  
November 2024

Submission to:

Ministry of Primary Industries

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## 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 Aotearoa New Zealand's plantation forests and over 70% of the annual harvest.

The New Zealand Farm Forestry Association (FFA) represents people who own small-scale private forests and/or are interested in the many values of trees. Currently we have over 1200 members representing a good cross-section of the approximately 15,000 entities owning private forests in Aotearoa New Zealand. Small forest owners represent more than 96% of the participants in the New Zealand Emissions Trading Scheme.

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 risk associated with exotic timber grown in New Zealand is very low. It is therefore essential to avoid implementing a disproportionately heavy-handed regulatory approach that introduces unnecessary complexity and costs.
- The proposal fails to include indigenous timber, despite it being widely acknowledged as carrying a higher risk. This omission raises concerns about the effectiveness and consistency of the regulatory framework in addressing genuine risks within the timber supply chain.
- The regulatory framework should be designed to minimise bureaucracy and align with existing certification processes, such as the EU Deforestation Regulation (EUDR). Participation in a recognised certification scheme should be deemed sufficient to meet due diligence requirements, ensuring regulatory efficiency while maintaining compliance integrity.
- The proposal to reduce the relevant legislation for the purpose of establishing compliance is generally supported, subject to specific comments. However, the question of what constitutes a “non-compliance” is key to the proportionality of the system to the risks posed and its workability and requires further consideration.
- The broad scope of the specified timber products raises concerns about the reach of regulatory coverage. The proposed scheme could impose significant compliance costs, including for

importers of products such as books, photocopying paper, common supermarket goods, and homewares. Given the relatively low registration thresholds, a substantial number of importers will likely be required to register, increasing the scope of the scheme and administrative burden across the sector.

- A cost-effective system that maintains proportionality in regulatory requirements is essential. As administrative compliance costs are expected to be shared among all registered entities, to avoid cross subsidisation and inefficiencies, consideration should be given to differentiating sector-specific compliance.
- Where uncertainty exists regarding the intent of a provision, drafting should prioritise the least restrictive regulatory burden to prevent unnecessary complexity.
- The due diligence system should be as straightforward and practical as possible. This is particularly critical as non-compliance could lead to serious consequences, including legal action, loss of harvesting or selling rights, criminal convictions, and substantial financial penalties. In line with recent resource management reform proposals, it would be more appropriate for loss of registration to only occur upon a successful application to the Court for the revocation of consent. Additionally, there is a risk that the outcome—such as an inability to be registered—is disproportionate to the nature or severity of the relevant offending. Ensuring proportionality in enforcement measures is essential to maintaining a fair and balanced regulatory approach.
- We recommend that the Ministry for Primary Industries (MPI) establishes a working group comprising of industry representatives to support the develop of the Legal Harvest Assurance system in New Zealand. Operational policy such as this should not be developed in isolation from the sector, industry practitioners hold the practical knowledge required to ensure that a user friendly, fit for purpose system is built. The Forestry Sector Environment Committee<sup>1</sup> would welcome the opportunity to be involved in a working group supporting the development of the system.

We set out below our specific responses to the Issues Paper No. 3 using the numbering in the Paper.

## Responses to questions set out in the Issues Paper No. 3

### 6. When is timber legally harvested

#### 6.1 Identifying harvest laws in New Zealand - Questions page 13

FOA and FFA partially support the proposal.

It is imperative that a notice specifies the land-use laws that are relevant to assessing legal harvest in New Zealand.

We support the proposal to list the Resource Management Act (the RMA), the Forests Act and Heritage New Zealand Pouhere Taonga Act 2014. In our view these Acts are relevant to the purpose of the legislation, to identify that the party undertaking harvest has the legal right to harvest.

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1. <sup>1</sup> <https://www.nzfoa.org.nz/committees/environment>

We oppose the inclusion of the Biosecurity Act 1993 which predominantly deals with keeping pests and diseases out of New Zealand. Inside the borders regional pest management plans manage the risk of pests spreading to adjacent land. The management does not control harvesting or the development of forest infrastructure but relates to responsibilities of afforestation, replanting and the growing of forests. There is no requirement for a permit or authorisation under this Act. Forestry activities are governed by the National Environmental Standards for Commercial Forestry (the NES CF) and accordingly the Biosecurity Act is not relevant to a legal harvest assurance process and whether a log has been legally sourced. In setting a standard for New Zealand grown timber we note that many of the countries New Zealand sources imported timber from will have no equivalent legislation.

The second issue that has not been clarified is the interpretation of '*does not contravene the harvest laws of the place or country of harvest when carrying out the harvest*'. This issue has been raised repeatedly by FOA both in previous submissions and during meetings with Ministry Staff. It is FOA and FFA's view that this should be restricted to requiring a declaration that the necessary approvals as required under the listed Acts have been obtained (for example, resource consents, Heritage New Zealand Authorities, Forests Act permits). Any compliance action under these Acts would not result in the logs becoming illegal, provided the party is still legally able to operate under New Zealand law. Similarly, any relevant criminal convictions under these Acts could be required to be declared but should not render the logs illegal.

An alternative interpretation, that any non-compliance (such as one identified in a council audit) deems the wood illegal, is impractical and could significantly disrupt the industry in some regions. It would result in the penalty of non-compliance being completely disproportionate to the scale of non-compliance. It could also impose a significantly higher standard on New Zealand-grown timber compared to imported timber, which cannot be held to the same criteria, especially when sourced from countries without equivalent legislation or oversight. This imbalance risks creating unintended consequences, unfairly tilting the market in favour of imported timber.

As highlighted in previous submissions, this also introduces several practical challenges regarding which wood would be deemed illegal and over what timeframe. Given that prosecutions can take months or even years, the wood from the relevant harvest would likely have already been sold and processed.

Considering the potential implications of these interpretations, it is essential that the regulations provide clear guidance on this matter. Further details on this are covered in our response to the questions in Section 8, *Legal Harvest Information*.

## 7. Legal harvest scope

### 7.1: Refining the scope of regulated timber - Questions on page 14

Based on the proposed definition of legal harvest in section 5, we continue to question why indigenous species are not proposed to be included as regulated timber through the

regulations, as is allowed for under the Act.<sup>2</sup> We note that the definition of “plantation forest” in the NES-CF does not distinguish between exotic and indigenous plantation forests.

The Act was drafted with the understanding that decisions regarding legal harvest would be limited to determining whether a responsible party has the legal right to harvest the timber. At the time, it was evidently decided that indigenous species were already covered by established processes under the Forests Act through Sustainable Forest Management Plans and Permits.

However, it is now being proposed that legal harvest considerations extend to compliance with the RMA, Biosecurity Act, and Heritage New Zealand Act. As those harvesting indigenous species are also required to comply with these Acts, it is inconsistent to require proof of compliance for exotic species while exempting indigenous species.

The proposal to exclude leaves from the definition of regulated timber is not relevant to our members, although we query whether needles will be considered to be leaves. We understand that there may be producers of oil from the needles of douglas fir.

#### 7.2: [Identifying specified timber - Questions on page 17](#)

Refer to our opening comments regarding the breadth of the scheme.

Using tariff codes to identify products that are covered by the regulations seems a logical approach especially as it aligns with export requirements. Our members are predominantly exporting logs which is relatively straightforward and covered by one code. However, we query how this will be managed where the wood content is secondary to the product being imported, for example, wooden pallets or packaging associated with other imported goods.

We disagree with the observation in the proposal that importers and exporters are treated equivalently because the proposal covers the vast majority of imported and exported goods containing timber. This statement ignores that indigenous timber, which is unregulated, provides a greater risk than exotic timber.

## 8. Legal harvest Information

### 8.2 [Legal harvest information for exotic species of New Zealand Timber - Question on page 19](#)

FOA and FFA opposes the proposed approach.

As proposed, it appears to be envisaged that the industry will develop a new documentation system specifically for tracking legal harvest assurance. This has the potential to create significant additional bureaucracy, duplication and documentation, for growers, processors and those in ministries attempting to monitor it, at significant expense and questionable benefit in a low-risk country.

Prior to any legal harvest, a resource consent is obtained, or NES-CF notice is provided to territorial and regional councils. This is the bottom-line legal requirement under the RMA to legitimise the harvest. The forest industry is unique in being required to notify both regional

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2. <sup>2</sup> Refer to submissions on Issues Papers #1 and #2

and district councils before undertaking permitted activities under the RMA, giving a higher level of assurance that regulations are being complied with.

As previously outlined, the industry already has in place systems for tracking of logs including:

- Log docketing systems: All log loads supplied to a processor are accompanied by a log docket. Those harvesting logs provide log docket reports to their customers to verify loads for invoicing, which detail every load delivered during the invoicing period and include the volume, species and source. For larger forest owners the log docket reports include details of the Harvest Area number and forest from where the load was sourced. Most larger forest owners now manage this process electronically.
- Forest Stewardship Council (FSC) and Programme for Endorsement of Forest Certification (PEFC) certified forest owners Chain of Custody systems: Both FSC and PEFC require forest owners to have in place Chain of Custody processes to verify that logs that are sold as certified are sourced from certified forests. The log docketing process is a core part of this Chain of Custody to enable logs to be tracked back to source. This process is audited annually by an independent auditor.
- European Union Deforestation Regulations (EUDR): As the ministry is aware the EUDR was due to come into force December 2024 and so those in the industry have already worked with their customers (in consultation with their customers in the EU) to finalise a documentation system to meet the EUDR. The EUDR has quite stringent requirements to provide proof of the source of timber, to verify that the timber has not come from an area that has been deforested. The system developed to meet the EUDR uses a combination of:
  - a single declaration to cover all logs supplied by a forest owner to confirm no deforestation has occurred;
  - the log docket report; and
  - spatial information to physically locate every Harvest Area detailed in the log docket, (either by way of GPS coordinates or a GIS shapefile).

The above processes are more than sufficient to meet the needs of tracking timber for legal harvest assurance.

A key issue is that the industry tracking processes work in real time, tracking what is actually supplied to each processor, whereas the proposed approach for the regulations requires this same information to be provided before supply, using predictions. This would require the company undertaking harvesting to not only predict the total volume they are going to produce, but also the log grade mix, so as to estimate the volume that would be provided to each customer. This would be particularly challenging for a small forest owner with limited information available to predict log grades and often changes being made during harvest as to who the logs are sold to. Despite the best efforts, any predicted volumes could potentially be extremely inaccurate.

The proposal to base the information on predictions rather than real information, presumably stems from section 88(1) of the Act that requires that *'Before receiving any regulated timber or specified timber product, a registered person must ...receive the legal harvest information of the regulated harvest timber and conduct due diligence.* In our view

this should not preclude use of the existing processes described above. A declaration could be provided prior to supply, but the detailed information regarding logs supplied could efficiently make use of existing log tracking processes. This would streamline the system and avoid an additional separate manual process with its attendant costs and inevitable inaccuracies.

Our suggestion is that the legal harvest assurance is fully aligned with the process to confirm compliance with the EUDR regulations. A periodic (annual) overarching declaration could be provided by the party undertaking harvest, covering both EUDR and legal harvest assurance, with the associated information relating to harvest units (species, location, dates, quantities) being provided by way of a log docket report and location information. This would ensure one set of information could be provided for both EUDR and legal harvest assurance purposes.

As addressed in our answer to the question on page 13, it is absolutely essential that the regulations clarify what 'compliance with the laws' means in relation to the declaration that is required. Under the proposal, any company that has any form of compliance issue, no matter how minor (for example, a minor non-compliance in a council compliance audit), could not in good faith attest that they are 'in compliance' with these laws. Similarly, if they did have compliance issues, it is unclear whether they could make that declaration for wood from another harvest area (or forest or region), and how long the non-compliance is considered relevant. In our view it must be made clear that the declaration attests that the responsible party has the necessary approvals and permits under the listed legislation, not their compliance history.

#### 8.2: [Legal harvest information for indigenous species - Question on page 19](#)

FOA and FFA disagree with the proposal to the extent that the proposal does not apply to indigenous timber.

As stated in our answer to the question on page 14, we question why indigenous forest harvesting would have different requirements to exotic timber. Indigenous timber was presumably excluded from the definition of regulated timber in the Act, on the basis that an indigenous forest harvesting permit proves that a party has the legal right to harvest. However, it is now proposed that four Acts must be considered when determining whether timber is legal. Indigenous forest harvesting also falls under the requirements of the Resource Management Act (including the NES-CF), Biosecurity Act and Heritage New Zealand Act and therefore should be subject to the same requirements as for exotic timber. Having different requirements and levels of proof based on species makes no sense.

#### 8.3: [Legal harvest information for specified timber products - Question on page 20](#)

FOA and FFA disagree with the proposal.

The consultation document acknowledges on page 9 that illegal harvesting is considered a low risk in New Zealand. We continue to believe it is unreasonable to impose a significantly higher burden of proof on New Zealand-grown exotic species than on imported timber, which has a much higher risk profile.

Under the EUDR framework, all parties exporting to Europe will be required to provide the same level of detailed information. Aligning our system with the EUDR, as we propose, would allow the use of the same tracking systems, ensuring consistency and efficiency.

The same level of information should be required for all timber products, with a higher level of scrutiny applied to those known to carry greater risk. However, the current proposal does the opposite, placing a disproportionate burden on low-risk domestic timber while allowing higher-risk imports to face fewer requirements.

## **9. Record Keeping for Responsible Person**

### 9.1: Exemptions for responsible persons - Question page 23

FOA and FFA agree with both the proposed exemptions for responsible persons.

### 9.2: Activity exceptions (thresholds) for responsible persons

We disagree with the proposed activity exceptions (thresholds) for responsible persons. Notably, these thresholds are lower than those proposed for low-level activity (s 10.2).

As currently drafted, a woodlot owner producing between 600m<sup>3</sup> and 2,000m<sup>3</sup> of timber and processing it for sale would be required to provide legal harvest information and maintain records for seven years but would not need to be registered. This inconsistency is illogical. A more straightforward approach would be to align the thresholds for both categories.

Most importantly, any registration process must be low-cost to ensure smaller forest owners are not unfairly disadvantaged.

### 9.3: Record keeping for responsible persons

FOA and FFA agree with the proposal.

## **10. Who needs to register**

### 10.1 Activity exceptions for classes of activities - Question page 25

As explained in our answer to the question on page 19, we disagree with the proposal that indigenous timber is not regulated.

FOA and FFA also question the necessity of requiring registration for exotic timber that is grown and processed in New Zealand for sale within the country, given the very low risk it presents. The Act allows for this to be exempted under the regulations, and this should be recognised.

### 10.2 Activity exceptions for low-level activity (thresholds) - Second question on page 25

As per our comments to the question on page 23, it is confusing and unnecessary to have different thresholds for a responsible person exception and an activity exception. The two should be the same.

## **11. Getting Registered**

As noted in our preceding submissions, FOA and FFA are concerned over the potential for the Legal Harvest Assurance process to become a costly and bureaucratic process that does not deliver the desired outcome. Given the forest industry's experience with MPI building complex and overly costly systems and then seeking cost recovery after the fact, we are wary of the potential implications of the statement on p26 that MPI "will consult on cost recovery after decisions on these proposals are made". Reflecting the low risk of illegal harvest in New Zealand, MPI should be

looking to keep any bureaucratic requirements as simple as possible to minimise cost and administrative burden.

#### 11.1: [Fit and proper person - Question on page 27](#)

In section 11.3 the proposed matters the Secretary must take into account when deciding whether a person is fit and proper to be registered includes whether the applicant or any decision maker has any criminal convictions or whether there have been any civil penalties imposed by a court or regulator. We are concerned that large companies which may have been subject to a conviction may be subject to significant restrictions preventing the harvesting or sale of timber. There is a risk that the outcome (an inability to be registered) is disproportionate to any relevant offending.

We refer to current RMA reform proposing to provide the Court with the power, on application, to revoke resource consents. Although we have raised some questions about the current drafting of those proposals, we acknowledge that the ability to revoke a consent would serve to create an appropriate threshold for deregistration.

The regulations should specify, consistent with the Criminal Records (Clean Slate) Act 2004 that companies need not disclose convictions that are greater than seven years old.

We do not agree that civil penalties should be included in this list and note that the proposal for persons who need to register is not consistent with the proposal paper at 15.2.1 (dealing with assessors and agencies) which recommends limiting the Secretary's consideration to only criminal convictions.

We reiterate our previous response that any approach to determining whether a person is "fit and proper" should avoid using a heavy-handed solution to a low-risk problem, with associated high compliance costs and intangible benefits.

Section 11.3 "Information requirements" sets out matters that may be taken into account relating to "fit and proper person information". We consider that matters such as the size of an estate, when the convictions were entered, the environmental risks of the afforested area, the historical planting of those areas and whether a finding that a party is not a fit and proper person are disproportionate to the conviction, are relevant considerations. For clarity, it would be useful to list these matters as the types of matters that the Secretary can consider relevant.

#### 11.2: [Any other criteria for registration - Second question on page 27](#)

The proposal makes sense where branches are operating separately and therefore logically with to provide information separately.

#### 11.3: [Information requirements - Question on page 28](#)

FOA and FFA disagree with the need to provide a website and photo (for a sole trader). Neither are necessary for the purpose of confirming legal harvest, and publishing of photos raises privacy issues. The information requirements should be kept to the minimum information required for the purpose.

## **12. Due Diligence Systems**

#### 12.1.1: Proposal for information collection - Question on page 30

As noted above, we question the disparity between the legal harvest information requirements for New Zealand grown exotic species, which requires GPS coordinates of its exact source to be provided, compared to the requirement for parties receiving imported timber to provide information about the place or country of harvest. It is illogical to have a lower standard of tracking for a significantly higher risk product.

#### 12.1.2: Risk Assessment (including verification information and risk mitigation or elimination - Question on page 30

FOA and FFA support the proposal to produce non-binding guidance for risk assessments, to enable registered parties to develop processes that are appropriate to their level of risk. As it is currently proposed a farm forester who harvests and mills their own forest for local sale is required to be registered under the same process as a person importing timber from a high-risk country. Inevitably, the level of risk assessment required will vary significantly for the two scenarios.

We note that this observation applies to all forestry harvesting in New Zealand and is a matter that needs to be taken into consideration in designing the risk assessment process.

#### 12.2: Additional criteria a certification scheme must meet to be recognised for use in a due diligence system - Question on page 31

Contrary to the proposal, a recognised certification scheme should fully replace the need for a Due Diligence system. This approach would acknowledge the low-risk nature of timber harvested under such schemes. Many of our larger members are certified to FSC, and in some cases, PEFC. Both certification systems require certified companies to have processes in place to comply with the law, including obtaining necessary resource consents and other permits (such as Heritage New Zealand Authorities). Additionally, both systems mandate that forest owners implement a Chain of Custody system to track timber from source to customer.

In the absence of a certification scheme fully replacing the due diligence proposals, FOA and FFA support the recognition of certification schemes for use in due diligence systems.

### **13. Obligations once registered**

#### 13.1: Record keeping - Question on page 33

While it makes sense for the regulations to clarify what records a registered person must keep we consider that some of the proposed information is a step too far. For example, evidence of compliance as to “how they are applying their due diligence system” requires a significant level of detail. For those parties operating under a certification scheme, evidence of compliance with the scheme should obviate the need to provide such information. It is also unclear why compliance with exporter requirements is relevant.

This is an area where certification schemes could be better recognised so that those who are part of a certification scheme need not provide certain information. Again, this approach would be commensurate with low levels of risk.

13.2: Declaration of compliance - Second question on page 33

The regulations should clearly outline the expectations for when this information needs to be provided—presumably on a periodic basis, such as annually.

The proposal mentions that "with a bare declaration of compliance, there is no way for the registered person when non-compliance has occurred and how it has been remedied."

It is also essential to clarify that any requirement to declare non-compliance should only apply to obligations that remain unresolved, rather than to non-compliances that have occurred and been remedied since the previous annual compliance report.

13.3: Conditions - Question on page 34

FOA and FFA agree with the proposal.

## **S14. Export Requirements**

14.1: Applications for an Exporter Statement - Question on page 36

FOA and FFA agree with the proposal. As noted above, we consider that any reference to non-compliance should be limited to non-compliances that have occurred and been remedied since the previous annual compliance report.

## **S15. Recognition of assessors and agencies**

15.1: Competency requirements for recognised assessors - Question page 37

FOA and FFA supports the requirement to have an independent assessment of due diligence processes for imported timber.

We question the need for the harvest of exotic timber in New Zealand which as has already been acknowledged as extremely low risk. Independent assessment is yet another bureaucratic process that will inevitably add costs and we would question if it adds any benefit in New Zealand. Section 105 of the Act appears to allow for a template process to avoid the need for an independent assessment.

Further to our comments to section 12.2, independent certification to systems such as FSC and PEFC should satisfy independent assessment requirements of due diligence. Requiring an additional audit would be an unwelcome overly bureaucratic and an administrative burden.

15.2: Fit and proper person requirements: specified convictions - Question on page 38

See the above response to the question on page 27.

15.3: Any other criteria for recognising classes of individuals - Question on page 40

As noted above, for very low risk situations we query the need for an independent assessment.

Notwithstanding this, it needs to be recognised that due diligence for New Zealand grown exotic timber is straight forward. It is a matter of checking a log docket system and potentially undertaking spot checks of some of their suppliers to verify their declaration. There should be no requirement for specialist qualifications for assessors of exotic timber.

On the other hand, undertaking due diligence for importers of timber from high risk locations will be significantly more complex and will require some knowledge of the inherent risks associated with harvesting in those regions and countries and their regulatory environment. Ideally the proposed guidance should identify different standards for assessors where there are differing risk levels associated with the activity.

## 16. Public Registers

16.1: Additional information for the public registers - Question on page 42

As stated in our submission on Section 11, Getting Registered, we are concerned about the unnecessary collection of information and its potential inclusion on a public register. While some individuals may find value in providing information that isn't essential to the functions of the legislation, others may not, and it should not be mandatory to provide information beyond what is strictly necessary for the scope and purpose of the legislation.

### Closure

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



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